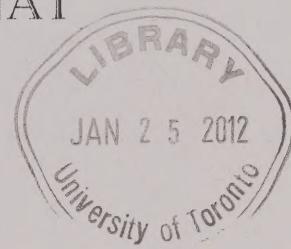


SENATE



CANADA

SÉNAT



# DEBATES OF THE SENATE

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OFFICIAL REPORT  
(HANSARD)

Thursday, December 15, 2011

The Honourable NOËL A. KINSELLA  
Speaker

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(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Thursday, December 15, 2011

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### AMAROK SOCIETY

**Hon. Grant Mitchell:** Honourable senators, Amarok Society is a Canadian charitable organization founded by Tanyss and G.E.M. Munro and their four children. This remarkable family that lives in Bangladesh found an innovative way to help educate children living in extreme poverty in the miserable slums of Dhaka.

Amarok Society opens schools for mothers in the shantytowns. Each mother, who never received an education herself, learns to become a neighbourhood teacher. She then teaches at least five children per day what she has learned. This is a very economical method of providing an education to such poor children.

I recently met Tanyss and G.E.M. Munro. Their dedication to the cause of providing autonomy for mothers and their children in Bangladesh profoundly touched me. Bangladesh is the poorest country in South Asia, a region that continues to be the poorest in the world. The country has over 150 million people in an area one-sixth the size of Alberta. Many of its people live in inconceivable poverty, danger and fear.

Amarok Society enables families and communities to live a more meaningful life, to be in better health and to reduce birth rates. Furthermore, education is the best prevention against the extremist forces in Bangladesh that are trying to radicalize the country.

I encourage Canadians to visit their website at [www.amaroksociety.org](http://www.amaroksociety.org) to learn more about Amarok Society. Its innovative work has a huge impact on the lives of thousands of Bangladeshi children and their mothers.

[English]

#### REAL-TIME QUARTERLY FINANCIAL REPORTING

**Hon. Hugh Segal:** Honourable senators, two years ago this very day, Bill C-51, the Economic Recovery Act (stimulus), received Royal Assent. In it were amendments to the Financial Administration Act requiring that every department and agency establish a quarterly financial report for each of the first three fiscal quarters of the year, to be made public within 60 days after the end of each fiscal quarter. This provision came into effect April 1 of this year, and in August the President of the

Treasury Board, the Honourable Tony Clement, announced that the first set of reports were available to the public "so they can see more detail on how Canadian tax dollars are being spent."

I arrived in this place in 2005. I had the privilege of introducing a bill that would require quarterly financial reporting of government departments and agencies in 2006. That bill made it to committee on several occasions but was interrupted by prorogation. I introduced another bill in 2007, which passed third reading here and was introduced in the House of Commons by Chris Warkinton, MP for Peace River, to multi-partisan support, but it was interrupted by an election and again I reintroduced another bill in 2009.

I would like to thank those colleagues who were present at the time for their tolerance and patience as they listened to the arguments on three separate occasions as to why real-time financial information was essential for Parliament to discharge its Magna Carta duties to control the expenditures of the Crown before the fiscal year actually ended. I think especially of Senator Day, who chaired the Standing Senate Committee on National Finance, Senator Murray, Senator Nancy Ruth, Senator Di Nino and Senator Stratton, who were so supportive.

Honourable senators, in the 1970s, Parliament surrendered its pre-control of government expenditure by bringing in the "deemed to be reported" rule wherein estimates of expenditures were not actually reviewed or approved but were deemed to be reported to Parliament by a certain date. The accounting of numbers was dealt with at a later date, which produced the retroactive finger-pointing blame game. Quarterly financial reporting obviates this game and offers Parliament real-time numbers pointing forward to successes or potential problems within the existing fiscal year.

The Minister of Finance, the Honourable Jim Flaherty, in his wisdom incorporated the quarterly financial reporting provision into the Economic Recovery Act of 2009. Today it is the law and celebrates its second anniversary.

The challenge to parliamentarians, the media, researchers, business, labour, and voluntary and NGO communities is to use these real-time quarterly numbers, make them an active part of our parliamentary and citizens' evaluation of how the Crown, through its government, spends money that in the beginning and in the end does not belong to the government, the bureaucracy or the system. It belongs to the hard working and taxpaying people of Canada who, in the classroom, on the farm, in our seaports, in our small businesses and large factories, and in our unions and community organizations, have every right to expect that their dollars are spent carefully.

#### NESIKA AWARDS

#### CONGRATULATIONS TO HONORÉ GBEDZE

**Hon. Mobina S. B. Jaffer:** Honourable senators, I am proud to rise before you today representing the province of British Columbia, which is recognized as one of the most culturally

diverse regions of the world. British Columbia is home to people from virtually all linguistic, cultural and religious backgrounds. In 2008, the Government of British Columbia, along with the Multicultural Advisory Council, sponsored the Nesika Awards, which both honour and celebrate the diversity that is so deeply rooted in our province's identity.

On November 18, the third annual Nesika Awards ceremony was held at the Museum of Vancouver. During the ceremony, one of our special British Columbians, Honoré Gbedze, who is the owner and editor of *The Afro News*, accepted the Nesika Award for operating a business that embraces diversity.

Born in an African village in Togo, Honoré learned from a very young age the importance of hard work and education. The son of a teacher and an entrepreneur, Honoré inherited a legacy of community development and participation. Spending almost two decades pursuing a career as a chef, Honoré has also found ways of bridging lines of communication in an effort to help Africans understand each other and have others understand Africans.

Honoré has received support from a number of parliamentarians, most notably our esteemed colleague Senator Martin. Senator Martin works diligently in our province on issues of multiculturalism. She is a strong voice for the multicultural community in our province. Thank you, Senator Martin, on behalf of all British Columbians.

• (1340)

Honourable senators, over the years I have observed with great admiration Honoré's commitment to fostering an environment of unity and understanding among not only the African Diaspora but all Canadians. He has shown my African brothers and sisters the importance of coming together and focusing not on what divides us but instead on what brings us together.

Every month, in every new edition of *The Afro News*, light is shed on the important issues that are facing not only the African community but Canadians across the country. Through this medium, he has provided members of the African community with an outlet to express their concerns and learn from each other.

Honourable senators, Honoré represents what it means to be a Canadian. He has dedicated his life to strengthening the bonds that unite us as Canadians, while at the same time embracing the diversity that makes us one of the most pluralistic countries in the world. I urge honourable senators to join me in congratulating Honoré Gbedze and Senator Martin for the great work they do in British Columbia.

[Translation]

#### THE LATE PIERRE ROLLAND, O.C.

**Hon. Andrée Champagne:** Honourable senators, on November 29, 2011, the world of music and musical education in Quebec became a little darker after losing one of its luminaries, Pierre Rolland. Young musicians from my province, regardless of their discipline, lost a mentor and a friend.

Originally from Quebec City, Pierre Rolland was passionate about music, a tireless worker and, some would say, a visionary. He was a key figure in the Montreal music scene for over 50 years.

He played the English horn in the Montreal Symphony Orchestra for decades. He was a record reviewer for *Le Devoir* for several years and also hosted radio programs on music for both the CBC and Radio-Canada, during which he conducted some memorable interviews with musical icons. He began as a professor in the faculty of music at the Université de Montréal, and went on to become dean. He was a founding member of the Orchestre des jeunes du Québec, the Quebec youth orchestra.

Despite his many professional obligations, Pierre Rolland, with the constant collaboration of his wife, Nicole, agreed to serve as artistic director at the Orford Arts Centre in the Eastern Townships, where they worked for several summers.

Any young person who has had the opportunity and good fortune to spend a few weeks of their summer vacation at the Orford Arts Centre will tell you that, in addition to being immersed in a first-rate musical scene, they found in Pierre and Nicole parental figures who were sensitive to and cared about their well-being, as well as excellent advisors who helped them develop their talent towards a successful musical career.

His dedication to young musicians in Quebec is what earned Pierre Roland his membership in the Order of Canada in 2010. In recent years, he had also taken on the artistic direction of Pro Musica of Montreal.

Pierre and Nicole had five daughters, who are all equally magnificent and talented. Although the cellist, Sophie, and the violinist, Brigitte, are the best known to us, Catherine, France and Marie-Pier are just as brilliant. Pierre called them his Opus 1 through Opus 5.

No doubt Pierre Roland left this world with the hope that at least one of his 13 grandchildren would choose a career in music.

Honourable senators, I am certain that you will want to join me in offering our most sincere condolences to Nicole and the entire family. André Sébastien Savoie and I would also like to assure them of our continuing friendship.

Pierre Rolland will be missed by music fans young and old.

[English]

#### SODIUM CONSUMPTION

**Hon. Art Eggleton:** Honourable senators, Canadians consume more than double the recommended daily intake of sodium, about 3,400 milligrams, which generally people associate with salt. What is alarming is that, on average, children as young as one are consuming about double the recommended sodium level every day.

The main problem, according to health experts, is not someone adding salt while they are cooking — because not all salt is sodium and not all sodium is salt — it is the sodium added to

processed and packaged foods, such as breads, soup and salad dressings. About 80 per cent of the sodium Canadians consume is added to these and other packaged products by food companies.

This is leading to significant health risks and costs to our health care system. There is a large body of scientific evidence that shows that a diet high in sodium can lead to high blood pressure, which is a risk factor for cardiovascular disease, stroke and kidney disease. There is also evidence to suggest that a diet high in sodium is a risk factor for osteoporosis, stomach cancer and asthma.

Research also suggests that a decrease in the average sodium intake of about 1,800 milligrams per day would prevent more than 20,000 cardiovascular disease events every year, resulting in direct health care savings of \$1.3 billion per year.

The government was correct to follow advice from Health Canada officials by establishing a Sodium Working Group in 2007, which came out with a significant report last year. The group recommended a structured, voluntary reduction of sodium levels in processed foods that would be monitored and evaluated. They also called for significant education and awareness for consumers, industry and health professionals because, as a Health Canada report recently said, many Canadians are confused about what steps are necessary to lower their sodium intake.

Unfortunately, honourable senators, the government has ignored the report and disbanded the working group, spending \$1 million to have the report sit on the shelf and collect dust. Also, we have recently learned that the government has ignored a plan that its own officials negotiated with the provinces to tackle this issue. This is at a time when the provinces are telling the federal government that it is imperative to focus more on the prevention of illnesses in Canada, which cannot be done by the provinces alone.

Honourable senators, the time to deal with this issue is now. The evidence is clear. The plans are there. All we need now is a federal government willing to show leadership.

[Translation]

#### THE HONOURABLE CLAIRE KIRKLAND-CASGRAIN, O.C.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I would like to pay tribute to a great Canadian. Yesterday, December 14, was the 50th anniversary of Claire Kirkland-Casgrain's election to the Quebec National Assembly, when she became the first woman to be elected to that institution. She succeeded her father, the Honourable Charles-Aimé Kirkland. In addition to setting that record, she also helped to shape Quebec's history. An eminent jurist, she has made a name for herself by defending women's rights and getting certain laws passed — the famous Bill 16, *An Act respecting the legal capacity of married women* in 1964; *An Act respecting matrimonial regimes* and the partnership of acquests regime in 1969; and *An Act respecting the Conseil du statut de la femme* in 1973.

She was an MNA until 1962, and a minister until 1973, when she was appointed as a provincial court judge in the judicial district of Montreal, where she presided until she retired in

1991. She was made a knight of the National Order of Quebec in 1985 and a member of the Order of Canada in 1992. Over the years, she has been given many awards that demonstrate her extraordinary commitment to justice and advancing the cause of women. This great woman is truly a pioneer who has made a lasting impact on our recent history, particularly in terms of improving the position of women in our society.

Today, on behalf of my daughter Anne-Charlotte, my wife Brigitte, and all Canadians, particularly the women of Quebec and Canada, I would like to pay tribute to her and to say thank you.

[English]

#### MR. JOHN CHRISTOPHER

#### CONGRATULATIONS ON RETIREMENT

**Hon. Wilfred P. Moore:** Honourable senators, I rise today to pay tribute to John Christopher of Ottawa, Ontario, who retired on September 1, 2011, having worked with Canadian parliamentarians for 40 years as a research officer and subsequently as an analyst with the Library of Parliament.

Trained as an urban and transportation planner, he assisted Senate and House of Commons committees involved in transportation, including transportation security and safety. As part of his responsibilities, he organized fact-finding trips for committees within Canada, the United States, Europe, Australia and New Zealand. In his capacity as a researcher, he authored reports and papers on such topics as airline restructuring, trucking safety, passenger rail, a national marine strategy and aviation security.

• (1350)

For a number of years he also served as an adviser to the Canada-United States Inter-Parliamentary Group. As a member of that group I had the opportunity to observe John's dedicated work first hand and to benefit from his guidance and support.

On behalf of the Canada-U.S. Inter-Parliamentary Group and the committees that he served, I thank John for all of his professional help. I wish John and his family the best of health and happiness and smooth sailing in the years ahead.

#### VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I would like to draw your attention to the presence in the gallery of His Excellency Veselko Grubišić, the distinguished Ambassador of Croatia to Canada.

Welcome to the Senate of Canada.

**Hon. Senators:** Hear, hear.

[Translation]

## ROUTINE PROCEEDINGS

### INTERNATIONAL TRADE

#### 2011 ANNUAL REPORT TABLED

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the second annual report on the activities of the Office of the Extractive Sector Corporate Social Responsibility Counsellor, for the period from October 2010 to October 2011.

### ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

#### ABORIGINAL HEALING FOUNDATION 2011 ANNUAL REPORT TABLED

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the 2011 annual report of the Aboriginal Healing Foundation.

[English]

### STUDY ON NATIONAL SECURITY AND DEFENCE POLICIES, PRACTICES, CIRCUMSTANCES AND CAPABILITIES

#### FOURTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE TABLED

**Hon. Pamela Wallin:** Honourable senators, I have the honour to table, in both official languages, the fourth report, interim, of the Standing Senate Committee on National Security and Defence, entitled: *Answering the Call: The Future Role of Canada's Primary Reserve*.

(On motion of Senator Wallin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[Translation]

### FINANCIAL SYSTEM REVIEW ACT

#### BILL TO AMEND—SECOND REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE PRESENTED

**Hon. Michael Meighen,** Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, December 15, 2011

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

#### SECOND REPORT

Your committee, to which was referred Bill S-5, An Act to amend the law governing financial institutions and to provide for related and consequential matters, has, in

obedience to the order of reference of December 6, 2011, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

MICHAEL A. MEIGHEN  
*Chair*

(*For text of observations, see today's Journals of the Senate, p. 782.*)

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

(On motion of Senator Carignan, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

[English]

### CONSTITUTION ACT, 1867 ELECTORAL BOUNDARIES READJUSTMENT ACT CANADA ELECTIONS ACT

#### BILL TO AMEND—EIGHTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

**Hon. John D. Wallace,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, December 15, 2011

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

#### EIGHTH REPORT

Your committee, to which was referred Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act, has, in obedience to the order of reference of Tuesday, December 13, 2011, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

JOHN D. WALLACE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

(On motion of Senator Wallace, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

[Translation]

## EDUCATION IN MINORITY LANGUAGES

### NOTICE OF INQUIRY

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rules 56 and 57(2), I give notice that, two days hence:

I will call the attention of the Senate to the evolution of education in the language of the minority.

We have been actively providing consular assistance and support. Government officials and Minister Ablonczy have been in contact with senior Lebanese authorities, and Minister Ablonczy has personally written to the Lebanese government on Mr. Tepper's behalf.

We all share the concerns as Canadians, New Brunswickers and members of Parliament for the situation that Mr. Tepper faces. I assure the honourable senator that the government is fully and actively involved in this case. Hopefully a solution can be found quickly and soon.

**Senator Munson:** I thank the leader for that answer, but in this kind of situation it takes more than a letter.

**Some Hon. Senators:** Agreed.

• (1400)

Let us remind ourselves who Mr. Tepper is — he is a Canadian. He is not in jail because of any terrorist act. This is about potatoes. He is a threat to no one. Why can this government not do the right thing? It is one thing to have the ambassador trying to do the right thing, and it is another thing to have these letters, but I think this is something that involves the foreign minister. Why can we not do the right thing? If he must face charges, at least have the charges laid and have them faced here.

**Senator LeBreton:** The honourable senator would know, since he was in government, the situation when sovereign governments take particular actions and how one government would view another government's actions.

The fact of the matter is that Minister Ablonczy is the minister with specific responsibilities in the Department of Foreign Affairs, and she has personally made representations to the Lebanese government. I wish to assure the honourable senator that this is not an easy situation for Mr. Tepper or his family. The honourable senator himself would know, because he has dealt with issues like this one, that there is no obvious, easy, simple solution here.

**Hon. Jim Munson:** Honourable senators, New Brunswick potato farmer Henk Tepper has been languishing in a Beirut prison for nine months. It is an awful situation. He is confined to a holding cell without windows. Having spent some time in Beirut as a foreign correspondent, I have seen some of those jails. He has been accused of forging documents relating to a 2007 shipment of potatoes to Algeria, yet nine months after his arrest no charges have been laid.

The diplomatic parlance is he is in diplomatic limbo. He is not in diplomatic limbo, he is in a jail. He is Canadian, a fellow New Brunswicker, sitting in a Lebanese jail, waiting to be freed, charged or extradited, but he waits and waits.

We saw Question Period yesterday on the other side, but how much longer must he wait? What will it take to get Mr. Tepper home for the holidays?

**Hon. Marjory LeBreton (Leader of the Government):** Senator Munson is quite right that this issue has been before us here in the Senate. Also it was raised in the other place yesterday specifically by two members of Parliament: one a Conservative member of Parliament and the other a member of the NDP from New Brunswick.

Obviously this is a serious situation. The government is very concerned about Mr. Tepper's case. We know of and fully sympathize with the difficult time this is causing him and his family. The Lebanese government specifically dismisses the allegation advanced by Mr. Tepper's lawyer a few days ago, that a simple letter would release him. The government of Lebanon affirms that it will act in accordance with its own international legal obligations when faced with requests for extradition.

I can report to honourable senators that our government, consular officials and the minister responsible for these files are actively working on Mr. Tepper's behalf, and it is to be hoped that the Lebanese government will deal with this matter. However, they are a sovereign, foreign government, and we are a sovereign government. There are certain limitations as to what one government can do. Suffice it to say, honourable senators, that everything possible that can be done is, in fact, being done.

**Senator Munson:** When this government was sworn in, Mr. Harper — and I praise him for it — had no hesitation whatsoever in speaking very loudly about human rights conditions in countries like China. He talked about people being imprisoned, and he talked about the Uighur gentleman being released. He spoke publicly about it. He spoke to the president of China, and he has done that on many occasions to other countries that have their own people in their prisons.

Why will the Prime Minister not intervene for a Canadian?

**Senator LeBreton:** Honourable senators, the fact is that there are specific charges here from the government of Lebanon. In other cases, where all of us speak, it is on matters with regard to human rights and Canadians who are caught up in human rights issues in various countries. This is a specific case. There are specific charges in Lebanon that Lebanon is handling as a result of allegations from another country. It is not exactly the same type of situation, honourable senators. I think the honourable senator would acknowledge that.

Again, all of that is to say that none of us here would in any way want to do anything other than to express our great concern for Mr. Tepper and his family. Again, I wish to assure honourable senators that the government and officials, including the minister, are doing everything possible because, as the honourable senator knows, there are things that are not possible. However, every consular service and everything that is possible is being done to assist Mr. Tepper in his dilemma.

**Hon. Larry W. Campbell:** Honourable senators, I wish to ask the leader exactly what the charges are in Lebanon.

**Senator Cowan:** Exactly.

**Senator Campbell:** I am very unclear on that, and I believe the rest of us are. Could the leader advise us of the charges that are pending against this Canadian citizen in Lebanon? It would be much appreciated.

**Senator LeBreton:** I do not have the exact charges in front of me. This is an action of a sovereign foreign government. The charges have been, of course, referred to many times in the media, but I do not know whether it would add anything to the case for me to stand here as Leader of the Government in the Senate and put on the record charges laid by a foreign sovereign government against one of our citizens. I will respectfully decline to do that, Senator Campbell.

**Senator Campbell:** Honourable senators, I am simply asking the leader a question. She was the one who referred to the charges in Lebanon, not me.

Is it possible that there are no charges in Lebanon and that a Canadian citizen is being held without charges in a foreign jail? Not to put too fine a point on this, but one would have to ask if this were an American citizen, how they would react to this. The leader referred to the charges, not me, and I do not need it from Senator Eaton, so I am asking the question again.

**Senator LeBreton:** Again, I can only speak from reading as much as all of us have read on this case.

I believe, honourable senators, that the charges are actually not from the Government of Lebanon but from Algeria.

**Senator Cowan:** Exactly; allegations.

**Senator Tardif:** Allegations.

**Senator Cowan:** That was not what you said.

**Senator LeBreton:** The Lebanese government is holding him pending a request from the Algerian government. That is all I know, honourable senators. As I understand it, he is being held in Lebanon at the request of the Government of Algeria. However, he is in Lebanon. Therefore, from the Canadian government's perspective, we are dealing with the Government of Lebanon in our efforts to assist Mr. Tepper.

## FINANCE

### HEALTH CARE ACCORDS

**Hon. Jane Cordy:** Honourable senators, during the spring election, Finance Minister Flaherty discussed the Conservative commitment to maintain health care transfers to the provinces for the 2014 health accord and to finish up on the 2004 accord on a 6 per cent escalator clause. The minister's comments were as follows:

We need to negotiate with the provinces and say: How long an agreement do you want? A five-year agreement? A 10-year agreement? A two-year agreement? . . . We will keep it at 6% for whatever the duration of the agreement is.

Those words were said by Minister Flaherty in March. Is this commitment made by the minister during the election a commitment the provinces can rely on?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, I think the honourable senator answered her question. We made a commitment. We have made a commitment to 2014, based on the last negotiation with the provinces, and Minister Flaherty stated just as the honourable senator stated. There will be new negotiations. He named a number of different scenarios. I can simply tell the Honourable Senator Cordy that the government will continue to increase funding for health care in a way that is balanced and sustainable. One of the goals of the minister is to ensure that there is more accountability. I think most of us would support that, including the provinces. I think most would want to know, when we get into the next round of talks on where we go on health care, that the money is being spent in a proper way and is accountable.

Again, I wish to assure honourable senators of one thing we will not do as we go through this process of finding savings: We will not, unlike the previous government, slash funding. We have not done that. As Minister Flaherty said, and the honourable senator read into the record what he said, there was no set term. It will be up to the provinces and the federal government when they sit down to negotiate exactly what those terms are.

• (1410)

**Senator Cordy:** The minister did say in his speech during the election that whatever the term was — two, five or ten years — there would be a 6 per cent escalator clause.

Is the leader saying that the commitment for the 6 per cent escalator clause that the minister made during the election campaign will be in effect?

**Senator LeBreton:** I do not remember saying 6 per cent in my answer, so I will have to check on the quote. All I am saying is that we will continue to increase funding for health care in a way that is balanced and sustainable.

This will be an important issue for all levels of government to deal with. Clearly, health care funding is top of the mind with all levels of government. The present health care accord runs out in 2014, which is still three years away. I am quite sure that between now and then, whatever the Minister of Finance and his provincial counterparts agree to — by the way, he is meeting with them, I think, within the next few days out in Victoria — will be something that will be commonly agreed to. However, as I pointed outside, one thing we will not do is slash funding to provinces for health care.

**Senator Cordy:** I am pleased to hear you say that whatever the provinces decide, in terms of the 6 per cent escalator clause, the minister will go along with that. I thank you very much for that.

The Atlantic Provinces anticipate increasing pressures on their health care systems as the population ages. The Atlantic region has a disproportionate percentage of aging Canadians compared to the rest of Canada, and these numbers will continue to rise for the foreseeable future. An aging population is a key factor to increases in health care costs for any province.

Provinces require stable and predictable assurances from the federal government in order to maintain and provide strong health care for Canadians. I am very pleased that the Minister of Finance, during the election, did promise the 6 per cent escalator clause.

Will the government commit to providing stable transfer increases of 6 per cent in any new agreement with the provinces?

**Senator LeBreton:** First, the honourable senator is particularly unique in always summarizing or trying to put on the record what she assumed I said. Of course, I did not say any such thing, as she just indicated when she started off her preamble.

At this point in time, we are three years away from the end of the existing accord. The minister and the provinces will meet. I have no idea — nor would any of us have any idea — what the provinces and the federal government will agree to or what the percentage or terms will be. This is all hypothetical at the moment.

All I can say is that the Minister of Finance will approach the provinces and will deal with the health care issue with a view to increasing funding for health care in a way that is balanced and sustainable. One of the minister's goals — I will make this very clear because the honourable senator is the one that tries to put words in my mouth — is to ensure there is more accountability in the way the money is being spent.

As I pointed out to the honourable senator, one thing for sure is that this government will not come out of the next round of negotiations slashing funding, as was the case under the previous Liberal government.

**Senator Cordy:** It is the Minister of Finance who said — and I will quote him:

We will keep it at 6 per cent for whatever the duration of the agreement is.

**Senator LeBreton:** Honourable senators, I will have to get the exact quote, but I think the minister was referring to the existing accord.

We do not know what the situation will be in 2014 and we do not know what the provinces will come to the table with. We do not know the economic situation that the country will be facing then. All of these things will be factored in.

All I can say, honourable senator, is that we, as a government — and we have been here now since 2006 — have absolutely honoured our commitment with the billions of dollars that we have given in increased expenditures to the provinces for health care.

What the next round will look like, none of us can say at this point in time. However, I will indicate once again, one thing that we will not do is reduce or slash funding to the provinces for health care.

**Hon. Wilfred P. Moore:** Honourable senators, in the 2007 budget of the leader's government, there was a clause whereby transfers to the provinces with regard to post-secondary education would be put on a per capita basis. There was also a line in there which said that under the new health accord, starting April 1, 2014, the funding would also be put on a per capita basis, as opposed to the existing basis of equity and sharing, particularly taking into consideration the less well off or have-not provinces.

Will the government be sticking to that position in the negotiations?

**Senator LeBreton:** Thank you for the question. First, there was a point I intended to make with Senator Cordy. It is important to note that since we formed the government, money transferred to the provinces for health care went from \$19 billion when we came into office, to \$27 billion this year.

As far as the question that the honourable senator specifically asked, I will take the question as notice and provide a written response.

[Translation]

## JUSTICE

### NOMINATION OF WOMEN TO ADVISORY COMMITTEES

**Hon. Rose-Marie Losier-Cool:** Honourable senators, yesterday, I read an article in *La Presse* on the results of its own investigation, which found a glaring lack of women among the 52 members appointed by the federal Minister of Justice to the 17 committees that advise Ottawa on the appointments of some

1,100 judges by the federal government. In Quebec, there are only two women among 16 members and nationally, there are only six women among 52 members.

I know that other members of the advisory committees are appointed by people other than the federal Minister of Justice, but today, I am focusing specifically on the members appointed by that federal minister. What criteria did the Minister of Justice receive for selecting members representing the federal government on the advisory committees? Do those criteria take into account the realities of the Canadian population?

[English]

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, the government is extremely proud of the judicial appointments that have been made. This includes the appointment of Chief Justice Nicole Duval Hesler, the first woman in Canada's history to be appointed as the chief justice of Quebec's Court of Appeal.

With regard to the judicial advisory committees, obviously these are committees that work on a volunteer basis, who continue to identify and recommend qualified candidates. Of course, the government will continue the practice of selecting candidates for the judiciary from the recommendations of those advisory bodies.

I also saw the *La Presse* story and I was surprised to see that there was a lack of detail in that story. The judicial advisory committees are set up across the country and, in most cases, the people that serve on those committees do so at the recommendation of the provincial government. It includes people like the chief justice of the province and the Minister of Justice from the province. Therefore, we are dealing with judicial advisory committees set up across the country formed by many governments of many political stripes.

• (1420)

The makeup of any judicial advisory committee from any given province is a mix of those named by the provinces as well as one or two by the federal government. The proof is in the pudding, as they say. Given the quality of judicial appointments, including the number of women appointed, I would dare say that it is a stretch to take issue with a group that volunteers their time to be on the judicial advisory committee and that somehow or other it is a knock against the government. That is quite a stretch.

[Translation]

**Senator Losier-Cool:** Honourable senators, that is precisely why I asked the question. When you say the proof is in the pudding, I want to know what criteria the Minister of Justice set for appointing people to these advisory committees? I know that the Leader of the Government agrees that it is important to have an equal number of women and men on every advisory committee. Nonetheless, what is the explanation for this imbalance?

[English]

**Senator LeBreton:** I wonder what the honourable senator would be saying if the government were to tell a province what member of its cabinet should be on the judicial advisory committee or

what member of the provincial bar association should be on that committee. Members of these committees are chosen, and many people are consulted in the process. I speak from experience because from time to time I worked with these groups. They tended to be made up of the chief justice of the province; the attorney general of the province; the head of the provincial bar association; and their volunteer groups.

The criterion, if there is one, is that we trust the good judgment of the provinces and the provincial bar associations to select the best people to put on the judicial advisory committee to properly advise the government of potential nominees to various judicial appointments.

[Translation]

## FINANCE

### ECONOMIC ACTION PLAN

**Hon. Céline Hervieux-Payette:** Honourable senators, my question is for the Leader of the Government in the Senate.

To listen to the Minister of Finance talk about Canada, it seems pretty clear that he is living in a fantasy world. The Governor of the Bank of Canada recently gave a speech in Toronto in which he destroyed all the minister's castles in the air.

In his latest report, Mark Carney describes a Canada that is quite different than the one presented by the minister. Mr. Carney says that Canada's productivity is low, that our demographics are insufficient, that our exports are being rejected by foreign economies in recession and that Canadian households are consuming beyond their means, while Canada is also going further into debt at an alarming rate.

Can the Leader of the Government in the Senate tell us if her government plans to revise its Economic Action Plan dramatically in the coming weeks, since, according to Mr. Carney's data, it has not been particularly successful?

[English]

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, there is not a great deal of difference between what the Governor of the Bank of Canada and the Minister of Finance have been saying. The Minister of Finance has spoken repeatedly on the record about concern over household debt, about productivity and about how Canada is falling behind in that area. I do not hear any contradiction in their comments. Obviously, the world is in a difficult financial situation, but I am pleased that Canada is recognized worldwide, for example the Organisation for Economic Co-operation and Development, the International Monetary Fund and others, as doing extremely well under difficult circumstances.

The Minister of Finance and the Prime Minister watch the situation daily, if not hourly, to remain informed of what is going on in the world. The government will always act in Canada's

interest and will take the necessary steps to ensure the most important things for Canadians: jobs and the economy. The government will do everything in its power to keep Canada in its current position, which is the best position in the world.

[*Translation*]

**Senator Hervieux-Payette:** The Leader of the Government in the Senate may wish to re-read the speeches given by her minister and compare them to the speech Mr. Carney gave on December 12, 2011, to the Empire Club of Canada and the Canadian Club of Toronto, in which he said:

In an environment of low interest rates and a well functioning financial system . . .

[*English*]

When we talk about how great we are, we are talking about the laws behind our financial banking system, which were established in 1995 under a Liberal government.

[*Translation*]

. . . household debt has risen by another 13 percentage points, relative to income.

We are at around 153 per cent.

Canadians are now more indebted than the Americans or the British.

The Americans and the British are in a difficult financial situation themselves.

Our current account has also returned to deficit, meaning that foreign debt has begun to creep back up.

When will the government take concrete action, such as limiting interest rates on credit cards — since it is people with limited means who end up paying the price — or lowering mortgage terms to 25 years, as suggested by the CEO of the Toronto Dominion Bank, so that Canadians do not end up in a financial crisis?

[*English*]

**Senator LeBreton:** I would suggest that the honourable senator read the finance minister's speeches because he has taken measures in all those areas that she mentioned. I read the comments of Mr. Ed Clark of the Toronto-Dominion Bank. The government already has taken steps with regard to the terms of mortgages. A bill was introduced on financial literacy and credit card reforms have been introduced. I would say to the honourable senator that perhaps it is not I who should be reading the speeches but she who should be reading them.

[ Senator LeBreton ]

[*Translation*]

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

### ENVIRONMENT—REGULATIONS FOR COAL-FIRED ELECTRICITY PLANTS

**Hon. Claude Carignan (Deputy Leader of the Government)** tabled the response to Question No. 24 on the Order Paper by the Honourable Senator Mitchell.

### ENVIRONMENT—PROPOSED REGULATIONS FOR GREENHOUSE GAS EMISSIONS

**Hon. Claude Carignan (Deputy Leader of the Government)** tabled the response to Question No. 26 on the Order Paper by the Honourable Senator Mitchell.

### ENVIRONMENT—SECTOR REGULATIONS FOR GREENHOUSE GAS EMISSIONS

**Hon. Claude Carignan (Deputy Leader of the Government)** tabled the response to Question No. 28 on the Order Paper by the Honourable Senator Mitchell.

[*English*]

## ORDERS OF THE DAY

### MARKETING FREEDOM FOR GRAIN FARMERS BILL

#### THIRD READING—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Patterson, for the third reading of Bill C-18, An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts.

**Hon. Tommy Banks:** Honourable senators, later today I will have the honour of casting the last vote that I will cast in this place. It will be against the bill which is before honourable senators. I will cast that vote not because someone else told me to; not because the whip has said one word to me about it, because he has not; and not because it is someone else's idea that we should oppose it as a matter of course. It is because I will be casting my vote in the interests of wheat and barley farmers in my province of Alberta and in British Columbia, Saskatchewan and Manitoba, the significant majority of whom have told us unequivocally what their view is with respect to this change in the marketing of wheat and barley in Canada — a system that has been in place for these many years.

There have been parties of which some members opposite have been members whose main tenet was that one should listen to constituents, find out what they say and do that. That is not

always a good idea. When the constituency is so clearly defined, as it is in this case, and when the persons who will be affected by a proposed piece of legislation are so clearly circumscribed in the case and where the effect upon them is so clearly expressed, it is a good idea to listen sometimes to those constituents.

• (1430)

Those constituents have told us that they want to continue with the single-desk marketing system for wheat and barley. They have told us that by a majority of 62 per cent in a referendum conducted by the Wheat Board, which ought, in fact, to have been conducted by the minister, but which was not.

We know, senators, that the minister's act of introducing this bill in the other place was, in itself, a contravention of the law. The Federal Court has told us that. Others of us have said from time to time that, whether it was a contravention of the law or not, it is doing by the back door something that cannot properly be done by the front door. I will read you a quote by a member of this place from 2004:

We are seeing, with [this bill], a crass manipulation of a system that is supposed to be non-partisan. Shame on those of us who advocate this, and shame on all of us who support this tampering with our laws by writing new laws to get around existing laws.

Those words were said, on the question of Bill C-49 at the time, by Senator Marjory LeBreton. That is exactly what we will be doing if we pass this bill, senators. This bill is not in the interests of the persons it will mostly affect, namely, producers of wheat and barley.

Senator Eaton said a couple of weeks ago that this should not be a case of downtowners telling farmers what to do, but that is exactly what this bill is. That is exactly what this bill does. This is someone saying to the farmers, "We know better than you what is best for you."

There is something that some of us clearly do not understand, senators, in our consideration of what we will do here today. The Wheat Board has, for the past many years, been controlled by farmers and not by anyone else. The board of the CWB, as it is presently constituted, is comprised of 15 members, 5 of whom are appointed by the government and 10 of whom are elected by the farmers themselves. For the past many years, those farmers — the people directly affected by this bill in ways that other Canadians are not — have elected a majority of pro-single desk members to the seats they control. The government suggests that it has a mandate to do this because 20 per cent of the Canadian electorate elected the present government. However, the mandate that was given to the members of the Wheat Board by the farmers who elected them was 80 per cent, 8 members of 10. Eighty per cent of those farmers said that they wanted to continue to elect members and to continue the single-desk marketing system. The government — I guess the downtown boys that Senator Eaton was referring to — is saying, "Well, farmers, you just do not know what is good for you. You are wrong about this single-desk marketing system that you have been voting for for years. Just to

prove it, we will ignore the law. We will flout the law. We will not obey the law, and we will disable the Wheat Board."

I am not saying the Wheat Board is perfect as it is presently constituted. Nothing is perfect. In fact, ways in which the CWB should probably be changed have been suggested. One good way to change it would be to simply give it to the farmers. They really own it anyway, morally, and they probably own it legally, as I shall refer to later. The best thing we could do is eliminate the government seats on the board, let the farmers elect the entire board, rather than the government appointing it, as is proposed in this bill, and let that board decide what to do.

That would be democratic. Instead, what we have here is virtual expropriation, senators. We have the government saying, in the bill before us, that there will be no more of this election nonsense and that they will appoint all the members of the board, and then everything will be okay.

"Hello, I am from the government, and I am here to help you." These are words to strike fear in the heart of every western farmer. This government is promising a gold mine to the farmers, but all they will get is the shaft, senators. You see, this is a despicable ploy. The government appoints directors to run a viscerally damaged institution. The institution will fail, and the government will say, "Well, we told you that the Canadian Wheat Board was a bad idea. It cannot even stand on its own two feet."

You set the thing up to fail; then it fails, and you say to the public, "See, it failed." That is what we are doing.

However, there will be big winners, honourable senators, if we pass this bill. There will be some very big winners. Can you say CN? Can you say Archer Daniels Midland? Can you say Cargill? There will be another big winner, too — the syncophants who simply want to get rid of any form of government intervention in agricultural marketing, including the Canadian Wheat Board and including, of course, inevitably, supply management. These are things that some of our trading partners do not like. They do not like them, and they do not need them. The U.S. and many European countries provide such preposterously high subsidies to their farming communities that not only is market protection not needed in those countries, but also those farmers can dump commodities on the international markets, at prices with which we simply cannot compete. We do not have the proportionate ratio of population base to farmers to allow us to give those kinds of subsidies. We have to even the playing field in other ways, like supply management and the Canadian Wheat Board.

After the passage of this bill, it will be a lot easier to cosy up to the protectionists in other countries when you can say that we did exactly what they wanted us to do. If we pass this bill, honourable senators, our trading partners will rub their hands in glee. That is the ulterior motive here, and the idea of the family farm will simply be gone. Signs at the farm gate will end in "Inc." In order to compete, farms will all be in the tens of thousands of acres after a few years, and they will either be owned by or be beholden to large corporations. The price of grain, as Senator Mitchell said yesterday, will be driven down so far that no family farm, not even big family farms, will be viable any longer.

Once this is gone, senators, once we have lost supply management — and that will surely be the next move — and once we have lost the Wheat Board, we can never get them back.

This is it. This is our chance, honourable senators, to do what the Senate is specifically designed to do. It is not designed to ensure the quick and seamless passage of whatever the government, whatever colour it is, sends from down the hall. That is not our job. We have a much more difficult job than that. We should do that job here and now, senators, by opposing this bill.

There are a couple of things I want to point out just before I sit down.

**Some Hon. Senators:** Do not sit down; keep going.

**Senator Banks:** I have to sit down. I am nearly 75, for goodness' sake.

Please look at the bill, page 8. I have had the pleasure and honour of serving governments of both stripes, from time to time, on boards, commissions and councils, and I have never seen language like this. The five directors of the new Wheat Board will be appointed by the Governor-in-Council. That is subclause 9(3), at the top of page 8. Subclause (4) says:

Unless the Governor in Council directs otherwise, the directors, with the exception of the president, must perform their functions on a part-time basis.

This is what it then says:

The directors are paid the remuneration that is fixed by the board.

What? I have never heard of any such thing. I have never read any such thing anywhere else in any piece of government legislation, any Crown corporation, any enabling legislation by anyone. That simply is not right, senators, that the board decides what they will be paid. Usually the Governor-in-Council decides or designates what directors will be paid and the means by which they will be paid.

• (1440)

There is one other thing in the bill to which I wish to direct honourable senators' attention. We have heard from the government that it has no intention of dismantling the Wheat Board. The Wheat Board will be free to compete. If it works, it works. If it does not, it does not. I want you to look at Part 4, but first look at Part 3. Part 3 of the bill is the part where the monopoly is removed. It is where it says the Wheat Board is no longer the single desk through which you farmers in the West can sell your wheat and your barley. That is what Part 3 says.

This is what Part 4 says, in clause 46:

This Part applies only if the Corporation is not continued under Part 3 within five years, . . .

— which is at the pleasure of the government —

. . . or any shorter period specified by the Governor in Council, after the day on which that Part comes into force.

There is a provision here that the Governor-in-Council can shut down the Wheat Board any time it chooses. Remember that the Government of Canada contributes not a dime to the operation of the Wheat Board. The contingency Fund, which is in the amount of \$200 million, belongs morally and perhaps legally to the farmers, because it did not come from the government. It came from the farmers. Clause 51 of the bill says:

Any surplus that remains after the satisfaction of the debts and liabilities of the Corporation and the winding-up charges . . .

— winding up is contemplated —

. . . costs and expenses belongs to Her Majesty in Right of Canada.

— not to the farmers.

**Senator Moore:** Expropriation.

**Senator Banks:** Her Majesty is expropriating the funds. Just to make sure that we understand what is in store, clause 52 says that the minister can appoint a liquidator to liquidate the Canadian Wheat Board.

Honourable senators, if we do the right thing, if we do what we are charged to do by the piece of paper that hangs on all our walls, we will have second thoughts about it this afternoon when we vote on this bill at 5:30. We will see that it is — I hate the word — not only flawed, it is wrong. It is morally wrong to do this to the people to whom we will be doing it, and we will rue the day.

**Some Hon. Senators:** Hear, hear.

**The Hon. the Speaker pro tempore:** Did you have a question, Honourable Senator Plett?

I should remind honourable senators before Senator Plett poses his question that the honourable senator has only 15 seconds left in his 15-minute speaking time.

Perhaps I should first ask Senator Banks two questions. First, would you accept a question from Senator Plett, and second, are you prepared to ask the chamber for an extension of your 15-minutes?

**Senator Banks:** Happily.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Donald Neil Plett:** I would not have done this except that it is Senator Banks' last day, and I need to ask Senator Banks one question before he leaves this chamber.

Thank you for your speech, Senator Banks. I am happy that you will have an opportunity to take part in this historical moment later on this afternoon.

Much has been said about the plebiscite. Of course, numbers can be thrown around this way and that way. Senators opposite have said that the Conservatives' 39 per cent of the electoral vote is not a strong mandate, so on and so forth.

I would like to ask the senator this question: The Wheat Board sent out 68,000 ballots on their plebiscite. Of course, there are not 68,000 farmers, but they sent out 68,000 ballots. They received a return of just over 50 per cent, according to their numbers — I think 56 per cent — so they received back somewhere around 34,000 or 35,000 ballots.

On the barley plebiscite they had a plurality of 51 per cent, which is not a large majority. In fact, 49 per cent voted against. However, if we take half of those 34,000 votes, we get 17,000. That leaves somewhere around 51,000 out of the 61,000 who did not vote in favour of this measure.

I am wondering what the honourable senator would say to those 51,000 good farmers who in fact did not vote to retain the single desk marketing? What should we as parliamentarians do for the 51,000 people who did not want what the 17,000 wanted? Who in fact is in the majority?

**Senator Banks:** I would ask the same question of the Canadian electorate, and the answer would be about the same.

**Hon. James S. Cowan (Leader of the Opposition):** I want to thank Senator Banks on behalf of all of us. He has made a tremendous contribution to this chamber. The speech he gave today and the passion he displayed on this issue is noteworthy and much appreciated by us all.

**Some Hon. Senators:** Hear, hear!

**Senator Cowan:** Regardless of whether or not individual senators agree with the views he has expressed, I think all of us respect the way in which he expresses his views and the care that he takes in preparing his presentations to the chamber.

Honourable senators, when I spoke last Thursday on this bill, I said that we were in uncharted waters. Indeed, I believe our circumstances here are unprecedented. The government is taking us where, to my knowledge, no Canadian government has ever dared venture before. It is pushing through — with relentless, unseemly speed — a bill that the Federal Court said was introduced in violation of the law. The Federal Court said that Minister Ritz failed to comply with his statutory duties under an act of Parliament prior to introducing Bill C-18 into Parliament. In the words of the court, "the Minister breached the law." It said:

At the present time, contrary to the requirements of s. 47.1, the Minister is unilaterally proceeding to revolutionize the process by securing the imminent passage of legislation.

Does Parliament have the power under our system of parliamentary democracy to pass Bill C-18, notwithstanding this ruling by our Federal Court? The government claims the answer is yes. Others have said the answer is no. That is for a court to decide at some point. Is it the right thing to do? Emphatically, I suggest to honourable senators the answer to that question is a definite no.

This self-proclaimed "law and order" government has decided that it is above the law, that it can ignore laws duly passed by Parliament, and that it can ignore the Federal Court when it declares that the government broke the law.

Let us be clear, honourable senators, this bill is before us as a result of conduct that has been found by the Federal Court of Canada to have been, "an affront to the rule of law." If the Government of Canada had obeyed the law, if it had respected the law, Bill C-18 would not be before us today. That is a simple and uncontested fact.

Honourable senators, we face a dilemma. How can we presume — how can we dare — to pass laws that ordinary Canadians must obey, while condoning the fact that the government does not feel compelled to obey them? That is what is happening here. If we vote to give this bill third reading — this bill, which was born from a violation of a federal law, a law that itself has been passed by this chamber — we are saying that this government is above the law, and that it can ignore the law with impunity.

Honourable senators, there are few things that strike at the heart of our democratic tradition as much as the principle that no one, not a minister of the Crown, not even the Prime Minister, is above the law. This simple legal principle is at the core of the rule of law and is what distinguishes a democracy from a dictatorship. In a democracy, the law applies to everyone equally.

• (1450)

I am sure that at least all the lawyers in this chamber are familiar with Lord Denning, a British judge who was sometimes and often described as the most influential judge of the 20th century. In a 1977 ruling against the British Attorney General, he said:

To every subject of this land, however powerful, I would use Thomas Fuller's words over 300 years ago, "Be ye never so high, the law is above you."

I know some senators opposite have argued that a majority means that the Conservative government can simply change the law, so what is the problem? Honourable senators, there is a huge problem if the process that the majority chooses to employ to change the law is in itself unlawful. In a democracy, the ends do not justify the means.

Many honourable senators, including myself, have quoted at length from the decision of Mr. Justice Campbell of the Federal Court on the meaning and critical import of the rule of law in this situation. I will quote from another, non-legal source, which lays out that principle very clearly.

Francis Fukuyama is, I am sure, well known and highly respected by many honourable senators on both sides of this house. He wrote a book that was published earlier this year entitled *The Origins of Political Order*, and he devoted a whole section in that book to the rule of law. That is how important he considers that principle to be in political development. This is what he said:

The rule of law can be said to exist only where the preexisting body of law is sovereign over legislation, meaning that the individual holding political power feels bound by the law. This is not to say that those with legislative power cannot make new laws. But if they are to function within the rule of law, they must legislate according to the rules set by the preexisting law and not according to their own volition.

Let me briefly recap what has happened here. My colleague Senator Day did so yesterday when he was speaking to us about this bill.

In 1998, Parliament passed a number of amendments to the Canadian Wheat Board Act. The overriding purpose of the changes was to take control of the Wheat Board away from the federal government and give it instead to the farmers themselves. A major change was to move the board from being a government-controlled one to being one instead controlled by the farmers themselves through the direct election, as Senator Banks has just told us, of a majority of the board members.

The Harper government is undoing those changes with Bill C-18. It is taking control of the Wheat Board away from the farmers and imposing government control. It is actually firing the farmer-elected board and replacing it with its own chosen people. I suggest, honourable senators, that these are backward steps.

I was particularly surprised to hear Senator Brown embrace those changes. In other contexts, he is a passionate advocate of elections. An elected Senate may be all well and good, but an elected board of directors for the Canadian Wheat Board apparently is too dangerous to be allowed to continue, according to Senator Brown.

Honourable senators, let us be clear. These are anti-democratic changes and they are being pushed through by anti-democratic means.

The 1998 amendments to the Canadian Wheat Board Act included a provision, the famous section 47.1, which stated that:

The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley . . . from the provisions of Part IV, either in whole or in part, or generally . . . unless. . . .

The section goes on to describe what must first take place:

(a) the Minister has consulted with the board about the exclusion or extension; and

(b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

Neither of these mandatory, statutory requirements were complied with by the minister. The minister failed, indeed he refused, to consult with the board, and he refused to hold the plebiscite required under the act.

Honourable senators opposite may quibble with the results of that plebiscite. The obvious answer to that was, "Do what the act required." The minister should have held his own plebiscite. Then he could have determined the rules, as he is authorized to do under the act, and then he would be bound by the consequences.

He did not do that. Why did not he do it? The only possible explanation for that would be because they knew they would lose the vote. They knew they would lose the vote, so they decided to break the law. Therefore, the ends for this government really do justify the means.

The Leader of the Government in the Senate, together with other colleagues of hers in the government, has tried to say that the real referendum was held in the form of the general election in May. Our colleague Senator Plett put the question a few moments ago to Senator Banks, suggesting obviously that that was the real referendum which provided the answer and the authority that the government needed to proceed.

Honourable senators, there is absolutely no basis for that specious argument. The two votes are simply not equivalent. A general election cannot take the place of a specific focused referendum on a particular issue. As Senator Fraser pointed out, the election of a separatist government in Quebec is not a substitute for or an equivalent to a referendum on the question of separation.

Indeed, the Federal Court dismissed that red herring of an argument. It simply quoted approvingly from a brief submitted by the Council of Canadians, which states:

Furthermore the opportunity to vote in a federal election is no answer to the loss of this particular democratic franchise.

The Council of Canadians was referring to the plebiscite required under section 47.1.

Until the sudden introduction of Bill C-18, Canadian farmers would have expected the requirements of s. 47.1 to be respected.

The other day, our colleague Senator Baker gave us a crash course on the principle of reasonable expectations by citizens.

Indeed, the Harper government had explicitly promised Western farmers that they would not make any changes to the Wheat Board without holding a plebiscite, as required by the law. The Honourable Gerry Ritz, Minister of Agriculture and Minister for the Canadian Wheat Board, himself told Western farmers that the Harper government respects the vote of farmers, and there would not be any attempt to impose dual marketing on the Wheat Board unless a majority of producers voted for it. This is what he said:

Until farmers make that change, I'm not prepared to work arbitrarily . . . They . . .

— he meant the farmers —

... are absolutely right to believe in democracy. I do, too.

That was before the election. Farmers voted, and many of them voted, as honourable senators opposite have repeatedly told us, for the Harper Conservatives. Farmers believed their promises, honourable senators, but immediately after the election and after the government won its coveted majority, suddenly everything changed. Suddenly, there was no need for a plebiscite. The election was all the plebiscite they needed.

However, as Senator Plett alluded to in his questioning to Senator Banks a few moments ago, because the government refused to do so, the farmers held their own plebiscite. Sixty-two per cent of wheat farmers and 51 per cent of barley farmers voted to keep the single desk; that is, to keep the Canadian Wheat Board in its current form.

The Harper government's response? In conduct that we now see to be the hallmark of this government, what it does not agree with, it simply ignores. In this case, it simply ignored or dismissed the results of the vote.

Since it was clear that a majority of farmers voted to keep the Wheat Board, the government decided not to hold a vote. The government proceeded to simply ignore the law. It refused to hold the plebiscite required under section 47.1 and dismissed as irrelevant or illegitimate the vote organized by the Wheat Board itself.

Stephen Harper says: "I am the law." Honourable senators will remember the memorable phrase in the election campaign: "I make the rules."

Honourable senators, if that were not sufficiently anti-democratic, it is worth recalling that throughout all of this, the gag orders have been raining down. The Harper government shut down debate in the other place on this bill, not just once but repeatedly. The first time-allocation motion was introduced after less than two hours of debate had taken place in the other place on this bill.

• (1500)

**Some Hon. Senators:** Shame.

**Senator Cowan:** The government then severely limited the committee meetings in the other place, hearing from only a handful of witnesses. This should come as no surprise. In 2006, the Harper government issued a gag order to prevent the Wheat Board speaking out to farmers and other Canadians about the value of a single desk. This had never been done before in the history of the Wheat Board. No government had ever tried to deny the board the freedom to speak out to the farmers who elected them in the first place, and the farmers whom they represent.

Here in this chamber, we tried repeatedly to have our Standing Senate Committee on Agriculture and Forestry travel to the Western provinces to be able to hear directly from the farmers about this bill in order for their voices to be heard. The Conservative majority opposite rose as one and said, "No," to hearing from Canadian farmers in the communities where they live. This was in stark contrast to what happened here in 1998.

By the way, the Liberal government had a majority back then in both houses, just as the Conservatives do today.

The 1998 changes were not uncontroversial. Many of the same voices were opposed to the Wheat Board as are opposed to it today. Indeed, Stephen Harper was then with the National Citizens Coalition. That coalition was strongly supporting those who were arrayed against the Wheat Board. However, the Chrétien government was not afraid to listen to opposing voices from parliamentarians or from Canadians who would be impacted by the proposed changes to the act.

The Standing Senate Committee on Agriculture and Forestry was tasked then, as it is now, with studying the proposed amendments. It was chaired at the time by Senator Gustafson, an opposition Conservative. The committee wanted to travel out West to hear directly from the farmers. There was no objection raised by the Liberal majority on the committee.

Indeed, Senator Stratton believed it was not good enough just to travel to Winnipeg, Regina, Saskatoon or Edmonton. He felt it was asking too much of farmers to leave their communities and travel to the big cities in their provinces. He said it was important to go right to the farming communities as well.

**Senator Tardif:** Hear, hear. What happened?

**Senator Munson:** A man ahead of his time.

**Senator Cowan:** Let me read to you from the transcript of the organizational meeting of the Standing Senate Committee on Agriculture and Forestry planning their study of the bill. This is from February 19, 1998. This is what Senator Stratton said at that meeting:

Why are we not going where the farmers are?

**Some Hon. Senators:** Hear, hear!

**An Hon. Senator:** Bravo!

**Senator Cowan:** Senator Stratton continues:

Why are we not going to a small town or small farming area?

**Some Hon. Senators:** Hear, hear.

**Senator Cowan:** I am still quoting Senator Stratton.

My point is part of the reason we go out there is to meet the folks with whom we are dealing on this issue. I think we really need to get to at least one place, either Brandon or Red Deer, to be able to see them face-to-face, on their turf, instead of in a big city. I really feel that is important.

**An Hon. Senator:** Bravo!

**Some Hon. Senators:** Hear, hear!

**Senator Cowan:** The Liberal majority on the committee agreed with Senator Stratton. I invite you to read the transcript, honourable senators. There was no dissent, no need for rancorous motions and no votes. The committee travelled, holding extensive hearings in the West, as well as in Ottawa.

Today, under this government, no travel, voices gagged, here in Parliament through time allocation, out West with gag orders on the Wheat Board, and by the heavy hand of the Conservative majority in both Houses of Parliament stopping committees from travelling to hear directly from Canadian farmers.

**Senator Cordy:** Shame.

**Some Hon. Senators:** Shame.

**Senator Cowan:** Then we have the Federal Court of Canada pronouncing on the actions of this government and declaring that, in the words of the court:

The minister's conduct is an affront to the rule of law.

Honourable senators, this is extraordinary. Our system is premised on the rule of law. That is what distinguishes us from tyrannies and military regimes. For the government to be found to have engaged in conduct that is an affront to the rule of law and then to brazenly press on, refusing to accept the court's finding, really does leave us, as I have said, in uncharted waters.

Unquestionably the court respected the separation of powers in our system. It was not asked and it explicitly did not rule on the validity and effect of any legislation which might become law as a result of Bill C-18. It did not say that the bill and any legislation it may create would necessarily be valid or invalid. That question remains open. However, as Senator Baker pointed out on Tuesday, the court made a special point of acting swiftly in order to make its order available. Indeed, the judge took the unusual step of saying he was issuing the order without waiting for it to be available in both official languages as he was of the opinion that to wait "would occasion a delay prejudicial to the public interest."

Why would the judge take that step? The obvious reason is that he wanted the judgment to be available before we in this chamber concluded our deliberations on Bill C-18. In other words, the decision could indeed impact on our decision.

This bill only came to us because the government ignored the law. Indeed, it breached the law. If we pass it, then we are telling Canadians that the members of the Harper government are not bound by their own laws — laws which everyone else must obey.

The Harper government really is not the "law-and-order" government it pretends to be but, rather, the "I-am-above-the-law-while-you-must-obey-my-laws-and-my-orders" government.

**Some Hon. Senators:** Hear, hear!

**Senator Cowan:** There is a name for that kind of government, honourable senators, but it is not "democracy."

Let us be clear: Members of this chamber who vote for this law after the clear findings of the Federal Court, and without waiting for the outcome of any appeals that might arise from that decision, are complicit in this breach.

I want to conclude by putting on record how this chamber used to work. I referred earlier to the very different approach taken in 1998 with respect to the Standing Senate Committee on Agriculture and Forestry travelling out West to hear directly from Canadian farmers who would be affected by these proposed changes. I discussed last week how amendments were proposed and agreed to by the committee during clause-by-clause study of that bill. Those amendments, as Senator Stratton will recall, came from both sides. There were Liberal amendments and there were Progressive Conservative amendments, and all passed with bipartisan support. That is how the best work of the Senate, and indeed of Parliament, gets done.

**Senator Stratton:** Just like the gun control bill.

**Senator Cowan:** I want to read to you portions of the debate in the Senate when the committee reported back. This is from the *Debates of the Senate* of May 14, 1998:

**Senator Gustafson:** Honourable senators, the Standing Senate Committee on Agriculture and Forestry has had extensive hearings in the Prairies. I commend the senators on the committee for the excellent work that was done.

We have had in-depth hearings. We heard from 100 individual farmers. We heard from 30 farm groups, three ministers of agriculture — from Alberta, Saskatchewan, and Manitoba — officials, and, of course, three times from the Minister of Agriculture.

We have significant amendments, with which I am very pleased. The cooperation of the committee in achieving these amendments and recommendations has been outstanding, and I thank the members for this.

I will simply list the amendments. The inclusion/exclusion clause in the bill is deleted. The appointment of the President is done in consultation with the board of directors, relieving some areas of that recommendation from the minister, and the Auditor General has a right to look into the books of the Canadian Wheat Board.

I will not hold the house up today with a long speech. Again, I thank the committee members for an excellent job. They have been a credit to the Senate of Canada, and we have received many compliments. I want to say this: A prophet once said: "Let another man praise thee and not by thy own lips." The members who sat on that committee have done an excellent job. They attended sincerely and put their hearts into the work. I am well pleased.

• (1510)

When he concluded his short statement, Senator Nick Taylor, a Liberal, spoke. He said:

Honourable senators, I echo what Senator Gustafson said.

One of the interesting parts of Bill C-4 is on marketing of grain.

Bill C-4 was the bill in 1998 to amend the Wheat Board Act.

There is really no such thing as compromise, but there is accommodation. The extremes on this side are for the free market, and the extremes on the other side for single-desk selling or an OPEC-type agreement. It is amazing that we on both sides of the house were able to reach an agreement. I suppose part of that is because both parties have people who strongly believe one way or the other in regard to the free market.

Senator Taylor concluded by saying:

I again echo Senator Gustafson's remarks that it was a joy to work with this committee. The publicity that we received in the west showed what the Senate can do, what the Senate is doing, and what the Senate has done.

The debate continued:

**Hon. Terry Stratton:** Honourable senators, I wish to express my thanks to the committee as well. It was very collegial, and we worked well together. Particularly, I think it was the push from this side —

He meant his side.

— to get out there to travel in the West that really accomplished a lot.

Much of the credit belongs to and resides with the chairman, Senator Gustafson. He did a superb job of running the committee hearings and keeping this thing loose but positive, to a very good end.

You will recall that the Honourable Mira Spivak was a Progressive Conservative senator. She said:

Honourable senators, I also want to tell you how admirable was the process of this committee.

**Senator Stratton:** How about the gun control bill?

**Senator Cowan:** We will get that bill soon, Senator Stratton, and you will have an opportunity to speak on that. I will look forward to your speech at that time.

Senator Spivak continued:

I give credit to everyone on the committee.

Also, we must give credit to Minister Goodale, who asked us for advice, as well as to the process which Senator Hays and others went through with the minister. We worked in close cooperation. I think this is a shining example of how the Senate can review legislation and get results that I hope will benefit the country.

Honourable senators, with leave of the Senate the report of those changes in 1998-99 was adopted and the bill was read for the third time. There was no further debate — none was needed — and the bill passed.

The Chrétien government and the members of the other place all accepted the Senate amendments. As Senator Spivak, a Progressive Conservative senator, said, it was "a shining example of how the Senate can review legislation and get results that I hope will benefit the country."

Honourable senators, that is how the Senate has traditionally worked and it is how it should work today to achieve the best results for Canadians. However, things are indeed radically different today. We now have a self-proclaimed law and order government that refuses to obey the law itself. We have gag orders issued against Canadian farmers who were duly elected by their peers to represent them, and now we have the government being found to have been engaged in conduct that is an affront to the rule of law.

This is no democracy that I recognize. This is no way to make laws; this is no way for Parliament to function; and this is no way to run a country.

Senator Eaton finds this amusing.

I will conclude by quoting from a column by Frances Russell published in yesterday's *Winnipeg Free Press*. The title of the column was "Rule by law, or is it rule of law?"

Ms. Russell wrote:

Is Canada governed by the rule of law — or only by the laws acceptable to the party in power? The difference, obviously, is not mere semantics. It is the difference between democracy and authoritarianism, between constitutional government and the exercise of arbitrary power by a temporary partisan majority.

These fundamental issues arise from the Harper Conservatives' decision to abolish the Canadian Wheat Board's single desk without holding a vote among western wheat and barley growers as required by the CWB's statute.

The article examined the Federal Court judgment and then continued:

University of Ottawa constitutional law expert Errol Mendes warns that when a government does something in violation of existing laws regardless of justice or what rights —

**Senator LeBreton:** Oh, oh.

**Senator Cowan:** Sometimes, Senator LeBreton, if you listen you might learn.

University of Ottawa constitutional law expert Errol Mendes warns that when a government does something in violation of existing laws regardless of justice or what rights are at stake, "that moves us towards an authoritarian state. What the government is doing is saying basically let's forget about the rule of law in this country and let's introduce the concept of rule by law."

China has "rule by law," he adds.

Honourable senators, my Canada respects the rule of law. I will vote against Bill C-18. I invite everyone to join me in sending a strong message to the Harper government about the critical importance of all Canadians — including, if not especially, members of the government — respecting the laws of this land, respecting the rule of law.

**Some Hon. Senators:** Hear, hear!

**Hon. Bert Brown:** Would the Honourable Senator Cowan accept a question?

**The Hon. the Speaker *pro tempore*:** Senator Cowan, would you accept a question?

**Senator Cowan:** Yes.

**Senator Brown:** Did I or did I not show Senator Cowan a copy of the Federal Court decision that stated, "No one in Canada shall export wheat or any product of wheat without the cooperation of the corporation itself"?

Senator Baker gave me a copy of that wrongful statement by the Federal Court. The farmers of Quebec and Ontario have always been able to sell or export their grain.

I will accept Senator Cowan's apology to elected senators or elected anyone else, right now.

**Senator Cowan:** This is a period for questions and comments. The question was whether Senator Brown showed me a copy of the section and the answer is yes.

**Senator Brown:** Senator Baker has another copy of it here.

**Senator Cowan:** Senator Brown did show me a copy of that section. Of course I have read it myself. I quoted it last week and again today, and it has been quoted by many other senators.

Senator Brown's quarrel is not with me. He has a different interpretation of that section than has Justice Campbell of the Federal Court of Canada. I am not saying that Justice Campbell is right and Senator Brown is wrong. Senator Brown may be right. That is what we have appeal courts for.

I will repeat what I said at the very beginning: The proper course of action for this government is to appeal the decision of Justice Campbell and to stop further proceedings on this bill.

Senator Brown may well be right and Justice Campbell may well be wrong. Judges are not infallible; judges make mistakes. That is why we have appeal courts.

The government should stop these proceedings right now, file their appeal, ask for an expeditious hearing of that appeal by the Federal Court of Appeal and ultimately, if they still do not like the answer, by the Supreme Court of Canada. Then, if they are right, if Senator Brown is right and Justice Campbell is wrong, we will pass the bill and everyone will know.

The only judicial opinion we have now is that Senator Brown is wrong.

**Senator Brown:** That is not the question I asked. I asked whether Senator Cowan had a copy of what Senator Baker quoted saying that no one in Canada could export grain or any product of it. That was an incorrect decision by the court.

I want Senator Cowan to tell me whether he read it and whether I showed it to him.

**Senator Cowan:** Senator Brown asked me whether I would confirm that he had shown me a copy of the section of the act. I confirm to him that he did. I had also read it. Senator Baker referred to it, as have a number of senators.

Senator Brown interprets that section in one way. I interpret it a different way. Justice Campbell of the Federal Court of Canada interprets it the same way as I do.

Senator Brown may be right and I may be wrong. I have been wrong before and he may have been wrong before.

• (1520)

However, is not for us to determine whether Justice Campbell is right or wrong. That is what the Federal Court of Appeal is here to decide.

The proper course of action, Senator Brown, is for you to convince — you shake your head, but do not shake your head. The proper course of action is for you to persuade your colleagues in government that they — Senator Brown, may I finish please?

**Senator Brown:** I said —

**Some Hon. Senators:** Order, order.

**Senator Campbell:** Order! Sit down!

**Senator Fraser:** The Speaker is the boss.

**The Hon. the Speaker *pro tempore*:** Honourable Senator Brown, Honourable Senator Cowan has the floor now.

Honourable Senator Cowan.

**Senator Cowan:** Your argument is not with me; it is with Justice Campbell. I am sure that if you asked to appear, to file a brief, Senator Brown, the Senate of Canada cannot overrule Justice Campbell. You may not like it. Maybe you will abolish the Federal Court of Appeal next.

**Some Hon. Senators:** Hear, hear!

**Senator Cowan:** The Federal Court of Appeal is there — Senator Brown? Senator Brown?

**Senator Campbell:** Hello, Senator Brown.

**Senator Cowan:** The Federal Court of Appeal is the place where you appeal the decisions of the Federal Court of Canada. If you do not like the decision of the Federal Court of Canada, you do not complain to the Senate of Canada; you do not complain to the House of Commons; you complain by way of appeal to the Federal Court of Appeal; and if you do not like that, you go to the Supreme Court of Canada. However, you do not ignore the decision, Senator Brown. That is my quarrel.

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** We are continuing with questions and comments.

[*Translation*]

**Hon. Roméo Antonius Dallaire:** Honourable senators, in the second part of Senator Brown's comments, he asked Senator Cowan to apologize for his pejorative remarks on his position as an elected senator. I am wondering about that: do elected senators have privileges that appointed senators do not?

[*English*]

**Senator Cowan:** As far as I know, I did not hear him ask me to apologize for something.

Did I miss that, Senator Brown?

**Senator Brown:** No, you did not miss it. What I said is that it had nothing to do with the statement of this act; it had to do with the wrongful decision of the court. That is what Senator Baker has —

**Senator Campbell:** That is your opinion.

**Senator Brown:** — and that is what I read to you.

**Senator Cowan:** Senator Brown, I can only repeat what I said. If you do not like the decision of the Federal Court of Canada, appeal it to the Federal Court of Appeal; do not complain to the Senate of Canada.

**Senator Campbell:** Grow up!

**Senator Cowan:** With respect to Senator Dallaire's question, as far as I know, Senator Brown was appointed to this body the same as all the rest of us. He has the same rights and privileges as all the rest of us, no more and no less.

**An Hon. Senator:** Bravo!

**Senator Comeau:** Put the fork in this one; it is done.

[*Translation*]

**Hon. Claude Carignan:** Honourable senators, my father was a grain farmer. He sold the farm to my brothers, who decided to buy other farms and grow more grain. They sold their grain to whomever they wanted to sell it to and, one day, they decided to process it and sell it to pet stores. It was a small business. They started buying their neighbours' grain. They negotiated directly with their neighbours to buy the grain. They created a fairly profitable company that currently employs 30 to 40 people, and the company sells its product in Quebec, throughout the rest of Canada and in a few places in the United States. Now, the company buys grain from a number of places throughout the world, even from Argentina.

My question is simple: if Quebecers can market their grain as they see fit and they have profitable companies, why do you want to deprive the people in Western Canada of that same right?

[*English*]

**Senator Cowan:** Thank you, Senator Carignan. I am not seeking to prevent western farmers from doing anything. All I am saying is that the act says that if you want to change the fundamental jurisdiction or fundamental nature of the Canadian Wheat Board, then you have to ask the board for its advice and you have to conduct a plebiscite.

My point is that neither of those things were done, and that is what the Federal Court has found. If the government consulted with the board and conducted a plebiscite, and a majority of the farmers who were entitled to vote voted in favour of this, and the government was introducing a bill, saying, "Look, not only have we promised that we would move away from the single-desk regime, we have promised that in three or four elections, and no one is disputing that, and you have done what is required under section 47.1," I would have no quarrel with that. It is not for me to tell western farmers how they should market their wheat and barley.

I am not saying there either should or should not be, or should have been, a similar regime in Quebec, Ontario or Nova Scotia. However, there is a regime in place today, and the law says that if you want to change that regime, you have to follow certain steps. My quarrel is with the process that has been followed, not with the result as to whether there should or should not be a single-desk marketing regime in place for western farmers.

[Translation]

**Senator Carignan:** You are a prominent lawyer. You have had a distinguished and exceptional career. You are recognized as an expert by your peers. I am therefore going to ask you a legal question: if there were a decision, a law that was clearly advantageous to all Canadians but was also clearly disadvantageous to farmers, and a choice had to be made between the collective interests of all Canadians and the interest of farmers, do you agree with me that farmers would never vote yes on the referendum? They would never vote yes because doing so would not be in their interest, which means that, according to your interpretation of section 47.1, Parliament can never change a law.

[English]

**Senator Cowan:** I think the honourable senator misunderstands me. I have no quarrel with the principle of the supremacy of parliament. We know that one parliament cannot bind a future parliament, with an exception. I think both he and I quoted from Professor Hogg. The paragraph that I quoted, and that others have quoted here in this debate, in the discussion we are having, makes it clear that the exception to that is that one parliament can provide certain prerequisites to a future parliament's ability to change the law, and that is the case here. That is what the court found.

The honourable senator and I may have a different view as to whether the court is right. He may be right on that and I may be wrong. I have given legal opinions in the past that have been wrong, and I am sure the honourable senator has as well.

That is what the court is for, as I tried to explain to my friend Senator Brown. That is the argument that one would have before the Federal Court of Appeal.

However, the only judicial opinion we have on this section is that that is the exception to which Professor Hogg referred and one of the only ways that one parliament can bind a future parliament.

As I say again, I would not quarrel with the result of a plebiscite by western farmers. I would not say, "I would be better off if there were a single-desk marketing of grain in Western Canada. I do not agree with that." That is not my place. The law says that it is up to them to decide. My quarrel is really with the refusal of the government to take those two steps that are required in section 47.1.

• (1530)

We have heard people say the overwhelming majority of Western farmers support the government's position. Maybe they do. However, the fact is they were not given an opportunity by the minister to vote in a plebiscite or a referendum, as required by section 47.1.

If that had been done and the result had been as the government wishes it to be, I would have no quarrel with that at all. I would not be making this argument. My quarrel is with the process that the government has followed here. I think it is flawed, and we are going down a dangerous route if we are ignoring that particular provision, that particular exception to the supremacy of Parliament. That is my point, honourable senators.

**Hon. George J. Furey:** Honourable senators, in an effort to try to simplify this, I would ask Senator Cowan if it is his understanding of the law in Canada that if a court were to make a decision that, for example, everyone in this chamber thought was egregious and wrong, that it is still the law until it is either overturned by appeal or addressed subsequently by Parliament?

**Senator Cowan:** Absolutely. I think that is correct, Senator Furey.

**Hon. Hugh Segal:** I wonder if Senator Cowan will share with us, pursuant to the helpful answer to Senator Furey, whether he accepts all the precedents where high courts at various levels have been asked to pronounce upon an existing law that was passed months ago, years ago, as the case may be, and found, in fact, that, after various appeals, that law was ultra vires or in violation of the Canadian Charter of Rights and Freedoms. Time has been given for government to make appropriate adjustments, but the ability of Parliament to legislate during the process of legislation was not inhibited because of that. Is the honourable senator suggesting that this bill is so special that that vast range of precedents which has allowed Parliament to proceed in the best possible fashion, based on its best judgment to do what it thinks is right — accepting differences of opinion between majorities and minorities as they have existed in the past — that precedent rule should not exist, that this bill should be treated specially, different from all others in the history of the country?

**Senator Cowan:** The difference is that we are dealing here with this form and manner exception to the rule of the supremacy of Parliament.

The larger question is what is the wise thing to do? I cannot tell you today, I do not know. I have not looked into what the effect will be. It will come to a vote at 5:30 today, Royal Assent will be given, presumably, shortly thereafter and then it will be the law of the land.

Let us suppose that Justice Campbell's opinion or decision is ultimately upheld by the Supreme Court of Canada. I do not know where that leaves us. I am suggesting that if you look at what is the right thing to do in the circumstance, we can do two things, "we" being Parliament, "we" being the Senate. We can proceed as we are apparently going to do, or we can say we have a decision to make here. Justice Campbell may be right or wrong, but there was a challenge to the process. The judge has said that it was an abuse of the law and that the bill is improperly before us. That is what the judge has said. Whether he is right or wrong is not the point.

[ Senator Cowan ]

Senator LeBreton said she was disappointed in the decision and they were going to appeal. I do not know whether an appeal has been filed.

**Senator Tardif:** Yes, it has.

**Senator Cowan:** An appeal has been filed and will be heard in due course.

The question is what we should do now. Let us leave the law aside. What is the reasonable thing for us to do now? We could decide to barge on and pass the bill and then we will see what happens. Let us suppose that the Federal Court of Appeal and then the Supreme Court of Canada uphold Justice Campbell's decision. Then we have the highest court in the land saying that Minister Ritz breached his statutory duty and that the act was improperly before Parliament. Arguably that may not be valid. I do not know how that would turn out.

Let us suppose that that would be the case. This would certainly take some months. Then we have a situation where farmers, relying on the bill that has passed and been given Royal Assent, are then going out and marketing the grain outside the purview of the Wheat Board. The government has proceeded under the powers in the act to fire the farmer-elected directors, appoint their own, they begin the process of not winding up but unwinding or dealing with the remaining assets of the Wheat Board. Undoubtedly the Cargills and the other major players that Senator Banks and Senator Mitchell have referred to will be in there buying up, directly or indirectly, or making farmers beholden to them. If all of this is going to go on, then how do you unwind it? I think I said, when I was arguing my question of privilege the other day to the Speaker, how do you unscramble that omelette?

On the other hand, we could decide to put things on hold and let the government ask the court to expedite its hearing of the appeals and see what happens. The Supreme Court of Canada may well agree with Senator Brown and disagree with Justice Campbell. Then we simply come back, we pass the bill and go ahead.

However, if the Supreme Court of Canada does not agree with Senator Brown and says that the bill is improperly before Parliament, and perhaps is of no effect, then where do we stand? That is my point.

We should forget the legalities and think about what is the right thing to do in this circumstance. The right thing is to just halt where we are, wait for the court to finally pass on the legal point and then proceed, one way or the other.

**Senator Segal:** I know my good friend will correct me if I misunderstand his position. As I understand his position, he is suggesting that we have two risks of uncertainty here. The first risk of uncertainty is that Parliament acts, the bill is passed and signed into law. We have already seen an indication that those who are opposed to the law will be seeking injunctions against either the promulgation of the regulations or various other acts

that would follow of an administrative nature directly after the passage of the law and the signing of it by the Crown. That is one uncertainty.

The other uncertainty, which I understand is the one that the honourable senator prefers, is if we were to allow a declaratory judgment, which is already being appealed, by the Federal Court, without a specific ruling suggesting that certain debates should stop and certain things should not proceed, a simple declaratory judgment to stop everything until an appeal and perhaps another appeal, over God knows how long, take place.

It strikes me that the two uncertainties have different implications. The notion that members of this place, in the discharge of our sovereign responsibilities, would choose the lesser uncertainty, namely a clear law passed by this Parliament and signed into law so the rules are apparent and clear, is far more in the public interest.

Would the honourable senator not agree that I am fairly stating his preference for one uncertainty over a more diminished one?

**Senator Cowan:** I am saying that if we simply put this on hold, on ice, and do nothing more until we have a final determination from the courts, the worst that could happen is people who do not want to operate under the single desk system have to operate under the single desk system for another short period of time.

To me, there is far less inconvenience to them, to the public and the markets and everything else than would be the situation if the Supreme Court of Canada were to determine that this bill is not proper. How do you then draw all that back, get rid of the people who will be appointed by the government and reinstate the farmer-elected directors? That seems to me to be a whole different game, a whole much more complex, much more difficult thing to unravel than to ask those who want to be out from under the single desk regime to wait a little longer to see whether Senator Brown is right or Justice Campbell is right.

• (1540)

**Senator Segal:** Is the honourable senator at all troubled by the precedent that would have been established in terms of legislative and democratic function in the other place and in this place, namely, that when any bill is proceeding through the House of Commons or the Senate, the mere application for a declaratory judgment at some lower court or higher court, as the case may be, would be sufficient to stop the legislative functioning of this place until that matter is appealed? Is that a precedent he would like to see established around this bill?

**Senator Cowan:** It is not an application. It was two applications, not one, and it is a decision. It is not an application. We have a decision, and Senator LeBreton is disappointed in the decision. The solution is to appeal the decision. Then you know. The court could be wrong, but we do not know until we appeal.

**Senator Tardif:** For now, it is the law.

**Senator Cowan:** For now, that is the only interpretation we have as to what the law is.

**The Hon. the Speaker:** Senator Baker on questions and comments.

**Hon. George Baker:** I wonder if Senator Cowan could verify for us all the fact that this was an application under section 18.1 of the Federal Court Act that has exclusive jurisdiction in matters in which a decision of a cabinet minister is being appealed, and that the subject matter of this judgment was not the constitutionality of the impugned section but was, in fact, seeking a decision of the court that would declare only that what the minister has done is unlawful and should never be done by the federal government without consultation with those affected.

**Senator Cowan:** Honourable senators, that is my understanding.

**Hon. Michael A. Meighen:** Honourable senators, it has been a long time since I have actively practised law. I certainly doubt that I had the distinguished career that the Honourable Senator Cowan had. However, I tend to share the view of my colleague Senator Segal in terms of the supremacy of Parliament, as I view it. If memory serves me well, the ability to obtain an injunction was generally dependent upon the ability to unscramble the omelette or not. The more difficult it was to unscramble the omelette, the more likely you were to get an injunction.

The question is: Why has the Wheat Board not applied for an injunction? Why do they not apply for an injunction? In that way, if the honourable senator's thesis is correct and their thesis, presumably, is that the omelette would be too bad to unscramble, they will get their injunction and it will stop, but, at least, the work of Parliament would go on. That is what is really important.

**Senator Cowan:** I have been away from it for a while as well, but in my understanding of the law, as I recollect it, I think the honourable senator is correct, and there is a balance of convenience. That is what I was trying to explain in my response to Senator Segal.

I think this is correct, and I am no expert on the procedure of the Federal Court of Canada, but I do not think it lies in the authority of the Supreme Court of Canada or the Federal Court of Canada to issue an injunction. They certainly did not apply for an injunction to the Federal Court of Canada. I do not, obviously, speak for the Wheat Board, but it is my understanding that there was an application made yesterday to the Court of Queen's Bench in Manitoba for an injunction. I do not know whether that has been heard, and I do not know what the basis of the application was. I asked the same question when I was preparing for this, namely, why would you not simply get an injunction, and I was told that the Federal Court of Canada cannot issue an injunction. I do not know that to be true.

**Senator Meighen:** I do not necessarily want to pursue this forever, but who cares who issues it, as long as it is issued?

**Senator Cowan:** Exactly.

**Senator Meighen:** Let us see if they get their injunction.

[*Translation*]

**Senator Carignan:** Can the Leader of the Opposition explain how he reconciles his opinion with that of the Supreme Court?

I will quote from the Supreme Court decision in the matter of a reference to the British Columbia Court of Appeal, which refers to legitimate expectations, as explained by Senator Baker. I disagree with the doctrine of legitimate expectations that would give someone the right to be consulted before a law is passed. At that point I believe it is substantive law and that doctrine no longer applies.

I will read slowly to ensure that the interpretation is done well.

Parliamentary government would be paralyzed if the doctrine of legitimate expectations could be applied to prevent the government from introducing legislation in Parliament. Such expectations might be created by statements during an election campaign. The business of government would be stalled while the application of the doctrine and its effect was argued out in the courts. Furthermore, it is fundamental to our system of government that a government is not bound by the undertakings of its predecessor. The doctrine of legitimate expectations would place a fetter on this essential feature of democracy.

How do you reconcile this passage with what you said this afternoon?

[*English*]

**Senator Cowan:** I do not think there is a conflict there at all. I think I was saying, as the court has said, that a specific provision in the act says two things have to be done before a bill can be introduced in Parliament. With respect to Justice Campbell, it does not matter whether I think that Justice Campbell was right or wrong. I am not a judge. He is a judge, he was asked for his opinion and he gave his opinion. In his view, there was a clear breach of the minister's statutory duty to introduce the bill.

As I said when I spoke on the issue of the question of privilege, in my view, and I may be wrong, the government could have introduced the bill, saying, "We will change section 47.1. We will introduce an act to amend the Canadian Wheat Board Act, by removing section 47.1, or at least those requirements. We will pass that. We have a majority in the House of Commons and in the Senate," and then bring in this bill.

I could not quarrel with that. However, what you cannot do, in my judgment, and in the judgment of Justice Campbell, is put the whole thing together, and say, "We do not care what section 47.1 says. We will not consult with the board. We will not have a plebiscite, and, indeed, we will dismiss the plebiscite that the farmers held because the government would not hold its plebiscite, and we will barge ahead and change the fundamental mandate of the Wheat Board."

That, I think, is very different from, as I understand it, what the Supreme Court there is talking about, namely, that it is wrong — and I agree — to suggest that a Parliament ought to be bound by the actions of its predecessors. I think the exception is the one that the honourable senator and I have discussed before, and that is where a previous act prescribes, as does this act and the Clarity Act, as another example, the conditions precedent which must take place before a future government changes a bill. That is the point.

With respect to legitimate expectation, there were two issues. I think it is fair to say that most Canadians, at least until now, would have a legitimate expectation that the government would obey its own laws. I expect I will be required to obey the laws, and I, up until now, have felt that the government would be bound by the same obligation to support the law.

I think there is a legitimate expectation that the laws are binding on everyone, whether one is the Prime Minister, the Government of Canada, a senator or an ordinary citizen.

I may have misunderstood the translation, but I think there was a reference there to statements that might be made during election campaigns. I cannot imagine it is ever true, but I think sometimes people do say things during a campaign that they perhaps would not otherwise say, or perhaps find difficult to uphold afterwards. However, certainly in this case, there were specific pledges by Minister Ritz —

**An Hon. Senator: Promises.**

**Senator Cowan:** — about the respect for democracy and abiding by the wishes of farmers.

• (1550)

There is no question that your party had said what it was going to do. There is no question about that. I do not, for a moment, have any quarrel with the right of your government to do that, but it has to do it in a way that respects the law. That is my point, Senator Carignan.

**Senator Baker:** Would Senator Cowan agree that if, in fact, the Federal Court has exclusive jurisdiction on appeals of ministerial decisions — which they do; we gave it to them with the ending of the Exchequer Court back in 1972, I believe it was — that since they have exclusive jurisdiction to deal with ministerial decisions, it would make sense that, first, you go for that declaration from the Federal Court and then seek your injunction after from the court that has jurisdiction?

If you first went and sought an injunction, they would tell you to go back to the Federal Court that has exclusive jurisdiction to determine the legality of the ministerial decision. Would the honourable senator not agree?

**Senator Cowan:** I agree.

**Hon. Donald Neil Plett:** If Senator Cowan would accept one more question, I feel a little intimidated getting in the middle of all these legal minds here, but it has sometimes been said that maybe a plumber or a farmer has the more basic question.

Senator Cowan, you have stated that you feel our government should have waited for a possible ruling. In fact, there was a ruling; there was no injunction.

I asked Mr. Oberg at committee why he had not asked for an injunction, because it would have made sense to me that he would have done so. Mr. Oberg said very clearly that he did not believe they would ever have received an injunction — not because it was a Federal Court, but just simply he did not believe they would get an injunction.

He later did a television interview — I was standing beside him waiting for my turn — and the reporter asked him the same question: Are you now going to go after an injunction? He again said, "No because we do not believe that we will get an injunction."

In fact, I do not think the government is just steamrolling forward here. Our government has filed an appeal on Justice Campbell's ruling. Justice Campbell has not given us an injunction. They are in court again, as you say, I also believe today — I am not sure why; they are asking for a stay of some kind. The judge may well give them that after Royal Assent.

I guess, at that point, maybe we will wait. However, one of the reasons that we needed to move ahead is because if the bill is supposed to take effect this year, it needs to be passed now so that the farmers can forward contract in order to operate on August 1.

There is nothing here saying what a judge may do. Justice Karen Sharlow — and I mentioned that in one of my speeches — said on section 47.1, very clearly, that section 47.1 does not stop Parliament from enacting any legislation that it sees fit to enact.

I am not sure where you feel that what Justice Campbell said should prevent us from continuing to move ahead in the steps that we are taking through the Senate and filing an appeal. If the judge in the Manitoba court puts a stay of some kind forward, we will have to respect, as we always do, what justices and judges say.

I think we are going about it in a proper way. I do not think we are steamrolling. I think we are doing everything within the law; but again, maybe you and your legal mind feel differently, obviously.

**Senator Cowan:** Thank you, Senator Plett. I think the answer to the injunction question is, as Senator Baker indicated, that it is not in the power of the Federal Court to grant an injunction. I think, as he suggested in his question to me a moment ago, that you had to follow procedure. You had to go first to get the declaration and then to get the injunction.

I do not know why the Wheat Board did what they did, when they did it — why they made one application here and made it there. I obviously was not involved in that, so I do not know; but I am speculating that it was because they needed to go to the Federal Court first and that the Federal Court could not give that injunction that we have been discussing.

That is the answer to that point.

**Senator Plett:** Justice Campbell, in his ruling, stated that the complainant had not asked for an injunction.

**Senator Cowan:** That is right; and I think the reason they did not ask for it is that it does not lie in the power of the Federal Court to grant an injunction, so they did not ask for it.

To the other question — were you answering Senator Plett, or would you like me to answer? Have you finished?

**Senator LeBreton:** Pardon me?

**Senator Cowan:** Have you finished giving your answer?

**Senator LeBreton:** Oh, oh!

**Senator Cowan:** I think the issue was, Senator Plett, what we should be doing now. Are we proceeding properly, or should we wait?

The only opinion that we have on this is the opinion of Justice Campbell. As I have said, he may be right or he may be wrong; that is what the appeal will determine.

I just think that, as I look at it, it is more complicated to unravel that situation if we find that at the end of the day the Supreme Court of Canada agrees with Justice Campbell and says that the government has to start over again, that the government did not do it properly.

If the Supreme Court of Canada says it disagrees with Justice Campbell and the government has acted properly, then there is no problem. However, there is always a possibility that the judge will be found to have been correct. Then I think we would be put in a very difficult situation.

I completely accept your argument that unless this bill is passed now, the marketing efforts will not be able to be done by whatever date you suggest. The result of that would be that it would be another season or another year under the authority or the regime of the single desk of the Canadian Wheat Board. I understand that to be the effect.

It is a question of balancing — balance of convenience or balance of difficulty. That is what I think the situation would be.

This is from Justice Campbell, which perhaps had more to do with the response to Senator Carignan. I am quoting from page 19:

During the course of oral argument, the Applicants confirmed that, should they be successful on the s. 47.1 breach argument, they would be content with that as the single result of the Applications. Therefore, I exercise my discretion not to grant the Legitimate Expectation Declaration requests.

I guess in the application, there were two aspects to it. They were successful on one, and the judge did not grant them the other. I think that is the complete answer to you, Senator Carignan.

**The Hon. the Speaker:** Are honourable senators ready for the question?

**Hon. Senators:** Agreed.

[*Translation*]

**Senator Carignan:** Honourable senators, I do not know how we might proceed, perhaps with the consent of the Senate. There were discussions between the two leaders, and we want to have a standing vote on this. We would like it to be held at 5:30 p.m., with the bells ringing at 5 p.m.

The problem is that given that we had a motion that was not moved, but that said we would have a vote on Thursday at 5:30 p.m., the public knew about the motion. Many people, including farmers, are anticipating that this vote will be held at 5:30 p.m., so we want the vote to be held at that time.

• (1600)

**The Hon. the Speaker:** I see that all honourable senators agree with this procedure. I will put the question and then proceed with the other stages.

[*English*]

Honourable senators, it was moved by the Honourable Senator Plett, seconded by the Honourable Senator Patterson, that this bill be read the third time. All those in favour of the motion, will please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those opposed to the motion, will please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "yeas" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Honourable senators, I understand it is agreed that the standing vote will take place at 5:30 p.m. So ordered.

**Senator Cowan:** There will be a half-hour bell.

**The Hon. the Speaker:** Honourable senators, if it would helpful and all are agreed, we will have a half-hour bell. The bells will begin at 5 p.m. for the vote at 5:30 p.m.

[*Translation*]

**Senator Carignan:** Honourable senators, my suggestion was that we continue with the items on the Orders of the Day until 5 p.m.

**The Hon. the Speaker:** The bells will ring at 5 p.m. The chamber will continue its work until 5 p.m.

**Hon. Senators:** Agreed.

[English]

## SAFE STREETS AND COMMUNITIES BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Stewart Olsen, for the second reading of Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

**Hon. Larry W. Campbell:** Honourable senators, I rise today to speak on Bill C-10, the safe streets and communities act, specifically the sections pertaining to drug crime.

The passage of Bill C-10 will increase the maximum penalty for the production of marijuana from 7 years to 14 years. It will reduce the use of conditional sentencing and mean harsher sentences for youth offenders and tougher pretrial detention laws. It will create a number of mandatory minimum sentences for serious drug offences, including a one- or two-year minimum, depending on aggravating factors, for possession for the purpose of trafficking in marijuana. It will also result in an incredibly disproportionate six-month mandatory minimum sentence for individuals who grow as little as six marijuana plants. These parts of the bill are deeply flawed. They are based on ideology rather than sound evidence and do not address underlying issues behind drug use in Canada.

I do not believe this proposed legislation is in the best interest of Canadians, so I cannot and do not support its passage in its current form for the following reasons.

First, mandatory minimum sentences remove judicial discretion for sentencing. It is judges, not politicians, who are in the best position to assess individual cases and decide whether a six-month or a two-years-less-a-day prison sentence is a just consequence for a crime committed or whether it will simply make a career criminal out of a young person who has made bad choices.

I was thinking about this and I remembered that I was once in North Vietnam and was taken to a prison that had been set up by the French government. They brought people from all over Vietnam who were against the French and had planned a revolution. This included Ho Chi Minh and General Giap. None of these people knew each other but met in prison. Through these meetings, actions were formed, the French were forced out of Vietnam and the war with the United States took place. The

person I was with stated that the French thought they were building a prison, when in fact they were building a university.

Experience dictates that prisons are incredibly efficient at taking in desperate and misguided individuals and turning out hardened criminals. Furthermore, the specifics of the mandatory minimums proposed in this bill are particularly senseless. Exactly what is the empirical evidence indicating that growing five marijuana plants could be punishable by a fine, while growing six demands six months served in jail?

I have some experience in the field of drug enforcement. It would be a complete waste of time and energy for me to "sit" on six plants in an attempt to build a case. In fact, in the majority of cases, no charges are ever laid because of the lack of evidence to support the charge. It could be due to the location of the grow-op outside or the people inside — usually immigrants who rent but have nothing to do with the grow-op — or a lack of substantial evidence.

These crimes should be investigated thoroughly and punishment should be determined by a court of law based on the nature of the crime as a whole and not on an arbitrary number of plants or, indeed, any arbitrary number at all. It is entirely possible that someone could be convicted of possession for the purpose of trafficking with fewer than six plants.

It should never be a number or quantity but, rather, evidence gathered by the police and presented to a court that should determine guilt or innocence. In answer to Senator Tkachuk's query, I admit that I would be hard-pressed to state that anything over 100 plants would be considered personal. However, from seizure to court requires proper investigation. After all, I am from British Columbia, where the marijuana trade is estimated to be worth up to \$7 billion. I could go off on a tangent and relate the benefits of regulating and controlling marijuana, but I will leave that for another time.

Second, this bill is not cost-effective. Whenever one looks at a bill, a cost benefit analysis must be done. Is it worth the effort to put out certain actions? Will the result be beneficial and worth more than the money and time you spend? This is not true for this bill, in particular for our provincial governments. They will carry the burden of these huge incarceration costs. With the implementation of these mandatory minimums, a large number of six-month and one-year sentences will be meted out. As honourable senators know, any sentence less than two years is to be served in a provincial jail rather than a federal jail.

According to an article yesterday in *The Globe and Mail*, federal government documents estimate that the price tag for the changes to legislation related only to young offenders will be \$717 million over a five-year period. Provincial governments are expected to pay for half that cost, and I suggest to honourable senators that it will be much more than half that cost. The Quebec Ministry of Public Security recently estimated that it will cost Quebec an extra \$294 million to \$545 million to expand prisons in order to accommodate the increase in prisoners. Already we have heard some provinces state that they refuse to foot the bill for the cost of this proposed legislation, which, obviously, they do not see as value for money.

If we continue on this path, an ever-increasing amount of taxpayers' dollars will be spent on mega-prisons, which will be filled endlessly. We will find that, like the United States, we will have a burgeoning trade in building prisons. Honourable senators, think of it. It is like building a Holiday Inn and never having to worry about someone coming and staying, because your occupancy rate is guaranteed and the money you receive for it is guaranteed. These tough-on-crime tactics defy common sense and are not sustainable.

Third, our prisons are becoming overcrowded already with disproportionately high numbers of Aboriginals, females, poor and mentally ill prisoners. Bill C-10 will only make things worse.

**An Hon. Senator:** Oh, oh.

**Senator Campbell:** That is right; it is already bad. I totally agree. This bill will make it worse because we do not have the place to put the people whom we will be sentencing. This bill will not accomplish its intended goal of cracking down on gangs and other organized crime rings.

• (1610)

The war on drugs, which prompts this legislation, will only waste money and worsen the situation for our most vulnerable citizens, all the while benefiting crime bosses, druglords and high-end gang members.

Inevitably, more poor, addicted, mentally ill and Aboriginal Canadians will cycle through the prison system, instead of receiving desperately needed help. Our own Correctional Investigator, Howard Sapers, recently said that this bill will only exacerbate problems related to population-specific overcrowding that currently exist in our prison system. The Canadian Psychiatric Association recently stated that this bill will only worsen an already bad situation in which mentally ill Canadians are being warehoused in prisons as a last resort when treatment is not available to them.

The Manitoba Grand Chiefs are urging the government to stop this bill, as they believe it will negatively impact First Nations in their province and does not address the real problems many Aboriginal communities currently face.

Honourable senators, why has the Conservative government ignored the voices of these and other marginalized groups? There is simply not enough empirical evidence to support this legislation. In fact, the evidence demonstrates the opposite: It will fail to reduce drug use.

Recently retired senior adviser at the Department of Justice, David Daubney, spoke out against the legislation, stating in an interview that when it came to crime policy,

It was clear the government was not interested in what the research said or in evidence that was quite convincingly set out.

We have seen the disastrous effects that mandatory minimums and longer sentencing has had in the United States. This government cannot continue to ignore these facts nor, in fact, the pleas from conservative experts in the southern United States, who urge us not to make the same mistakes they did.

Honourable senators, this tactic has been tried, tested and, in the United States, amended. With the implementation of a shockingly similar "tough on crime" stance in Texas, their megaprisons became highly overcrowded and their court systems overloaded, and their crime rates did not drop. However, since they reversed these policies completely and focused on treatment programs and probationary measures, crime rates and crime-related costs have fallen. In the five years directly after the Texas government made a 180-degree turn in their policy, the rate of incarceration in Texas dropped by 9 per cent, and the crime rate dropped by 12.8 per cent.

Honourable senators, we cannot afford to move in the wrong direction for years before we finally learn the same lesson.

What is more, contrary to what this Conservative government is saying, Canadians are not fearful of their streets and communities. According to a poll referenced in *The Globe and Mail* on December 12, 93 per cent of Canadians feel safe from crime. The article goes on to ask an excellent question: "Why, then, spend billions of dollars to go backward?"

I would like to address this idea of fear. For over 40 years, as a member of the RCMP and the British Columbia coroner's service, and as mayor, I have dealt with the fear of others. In the beginning, I tried to dismiss these fears as irrational. I realized, however, that fear is real, regardless of reality. Fear can only be dealt with by timely, factual information. It is the responsibility of a government to address fear, not to create it. While this bill may calm the fears of the 7 per cent, it does nothing to, in fact, make Canada a safer or less dangerous place.

With virtually all forms of crime dropping, we should be looking at the causes of the decline and working toward ensuring it continues. We need to work towards solving the underlying issues that are the driving force behind crime in our country, instead of throwing harsher punishment and jail terms at our most vulnerable populations.

This bill will capture those at the bottom. This bill will capture the young. This bill will capture, yes, the stupid. This bill will capture the wannabes. This bill will not capture druglords. This bill will not capture those who are sending the drugs overseas, and this bill most certainly will not stop cultivation in this country.

We have to look at new ways of solving old problems: harm reduction strategies, community-based strategies, youth programs that deal with high risk sectors of the population, and scientifically sound solutions. These are the only ways to improve this situation.

Honourable senators, the sections of Bill C-10 that attempt to crack down on drug use are simply not good policy. In its current form, this bill will not accomplish its intended goal, which is to create safe streets and communities. It will only fill prisons, overload courts and burden taxpayers with ever mounting costs.

I strongly oppose this bill.

**Hon. Lillian Eva Dyck:** Honourable senators, I rise today to speak to Bill C-10, the government's so-called Safe Streets and Communities Act. Today, I will address the impact of this piece of legislation on our Aboriginal Peoples.

It is the dream of every Aboriginal child to live and grow up on safe streets and in safe communities, but this bill does little to make that a reality in Canada's Aboriginal communities. It is imperative that we examine Bill C-10 in the context of the Aboriginal population, since they will be most affected.

The staggering overrepresentation of Aboriginals in the Canadian prison system has been well chronicled and reported over the last several years, by both the Auditor General and the Office of the Correctional Investigator. Aboriginal people comprise less than 4 per cent of the Canadian population, but they represent 20 per cent of the total federal prison population. This overrepresentation is even worse when we look at the Prairie provinces, where the majority of Aboriginal Canadians live. In my home province of Saskatchewan, Aboriginals make up about 14 per cent of the population, but they represent about 57 per cent of the provincially incarcerated population. Study after study suggests that the underlying historical, social and economic issues plaguing Aboriginal communities are the root causes for this overrepresentation. Yet, the government's only answer seems to be to lock them up, fail to offer the necessary rehabilitation and mental health services and throw away the key.

Bill C-10 only exacerbates the current situation for Aboriginals in prison, and goes completely against the trend of recognition and reconciliation that the criminal justice system has tried to adopt. The Supreme Court of Canada, with their decision in *Gladue*, tried to address the need for the criminal justice system to give particular attention to the circumstances of Aboriginal offenders, given their social history, and to consider all other available sanctions other than imprisonment. Changes to the Criminal Code and the Youth Criminal Justice Act were made to bring into consideration some cultural and historical sensitivity when it came to sentencing Aboriginal offenders. As the Ontario Court of Appeals wrote in their recent 2011 decision in *R. v. Collins*, it must be made clear that this approach to sentencing

... is not about shifting blame or failing to take responsibility; it is recognition of the devastating impact that Canada's treatment of its Aboriginal population has wreaked on members of that society.

However, as successive reports by the Office of the Correctional Investigator have noted, these traditional Aboriginal justice programs are not widely accessible to the incarcerated Aboriginal population. We are left with greater overrepresentation and little help for the underlying causes of criminal behaviour.

What is neglected by this Conservative government and this piece of legislation, is the historical and cyclical nature of incarceration on the Aboriginal population, especially as it affects Aboriginal women and girls.

• (1620)

This is an important segment of the Aboriginal population to focus on because the proportion of Aboriginal women and girls in custody has continued to steadily increase since 1997. The numbers are truly astounding. In the case of women offenders, 33 per cent of the total inmate population under federal jurisdiction are Aboriginal. This number jumps to 87 per cent for the female Aboriginal population incarcerated in Saskatchewan.

When we look at the cyclical nature of Aboriginal incarceration and these staggering numbers, it should come as no surprise that a significant number of Aboriginal women in prison today had parents or relatives who had also been incarcerated. It is a problem that has deep roots in communities.

The Native Women's Association of Canada has produced a significant report entitled *Arrest the Legacy: From Residential Schools to Prisons* that highlights the criminalization of Aboriginal women that stems from the decades of intergenerational trauma caused by the legacy of colonial policies, namely the policy of residential schools. This legacy has led to years of physical and sexual abuse, discrimination, alcohol and drug addictions, and other mental health problems. These conditions render Aboriginal women and girls vulnerable to criminalization.

Honourable senators, most incarcerated Aboriginal women, according to the Elizabeth Fry Society, are in prison due to crimes associated with maintaining an alcohol and/or drug addiction. They have been charged with economic crimes such as theft, fraud and prostitution.

In the new provisions of Bill C-10, the government has decided to bring mandatory minimum sentences into the Controlled Drugs and Substances Act. This will eliminate the opportunity for judges to apply subsection 718.2(e) of the Criminal Code, which allows for the application of principles and policies to Aboriginal offenders. Judges will no longer be able to use their discretion with Aboriginal offenders by sentencing them to culturally relevant programs instead of incarceration in prison. With Bill C-10, it is a mandatory minimum and, in reality, nothing else. While a judge may sentence an offender to a drug treatment facility or a drug court, there are no drug courts in the North and serious delays already exist in getting into the few drug treatment programs currently available. Bill C-10 will make things worse.

Many of these programs that try to deal with the addiction problems will not be made readily available to the incarcerated Aboriginal population, especially since they are located in cities far from reserve communities. In addition, Bill C-10 makes no additional exception for judges to sentence Aboriginal offenders to Aboriginal justice courts, such as the Gladue court in Toronto, to avoid the mandatory minimum sentence. Under Bill C-10,

Aboriginal women offenders will find themselves with no access to any alternative sentence that incorporates Aboriginal justice principles and they will have a very difficult time accessing the drug and mental health treatment that they need. They need this far more than they need to be locked up in a prison.

Honourable senators, two thirds of Aboriginal women in prison are mothers and many are the sole parent of their dependent children. While programs for incarcerated women to maintain contact with their children are limited, conditional sentences allow the judge flexibility in sentencing to allow single mothers to continue working while serving their sentence, or ensure that those with underlying mental health needs get the community treatment that best ensures their recovery and rehabilitation. This prevents breakdowns of families and addresses the underlying issues of Aboriginal criminal activity. However, Bill C-10 eliminates this type of conditional sentencing. By replacing conditional sentencing for Aboriginal mothers with mandatory minimums, mothers will be incarcerated longer with no recourse to maintain the relationship with their children.

Aboriginal children whose only parent is in prison will most likely be lost to the foster care system. In addition, the inclusion of nonviolent crimes — such as theft over \$5,000 — in the list of offences ineligible for conditional sentences targets these Aboriginal women. As I stated earlier, the large majority of Aboriginal women are in custody due to economic crimes.

This becomes a salient point when we look at the incarceration rate of Aboriginal girls. Between 2008 and 2009, Aboriginal female youth comprised 6 per cent of the Canadian female population, but accounted for 44 per cent of female youth in custody. Of the Aboriginal girls who are incarcerated, a staggering 81 per cent had been in foster care at some point. If we were to reflect upon my earlier point of how Bill C-10's mandatory minimums and elimination of conditional sentencing affects Aboriginal mothers, we can clearly see this cycle of incarceration on the Aboriginal population. Furthermore, we can specifically see how Bill C-10 makes the problems worse.

For example, consider this: The mother becomes incarcerated. She has no options while incarcerated to access culturally relevant programming and/or mental health treatment. She is not afforded the opportunity of a conditional sentence to allow her to maintain her relationship with her daughter. The daughter is placed in foster care and is also more likely to commit a crime and end up in custody. It is a heart-breaking cycle; mother and daughter, constantly in and out of the prison system.

Honourable senators, I will take a moment to talk about different models of justice and I would like to refer you to the material in *Arrest the Legacy: From Residential Schools to Prisons* because there are completely different justice systems within our mainstream society and within Aboriginal communities. Years ago I read book entitled *Dancing with a Ghost*, written by Rupert Ross, a judge who travelled in Northern Ontario to hold Aboriginal court. He wrote this book as a consequence of his experience because he could not understand the community. He did not understand why sentencing someone to prison did not satisfy that community.

I take this information from the Native Women's Association of Canada. In our mainstream community, crime is individualized. In the mainstream community the penalties are prescribed by the state and it limits who can participate in the process and solutions. That is how our mainstream judicial system works.

In the Aboriginal justice system, however, we encourage communities to assume responsibility for what is happening to their young people and to come together with the common purpose of identifying a solution that meets everyone's needs: the person who is being charged, the victim and the whole community. In these communities they recognize that the offender has to come back and live with their family and the community. We cannot just punish the offender. We must rehabilitate, because if the offender is not rehabilitated, he or she will come back and repeat the same sort of offences, unless they learn how to live within a community by the community's rules.

Within the mainstream community, what we talk about here is primarily legalistic. It excludes many people impacted by the crime by extension, such as the families. The victim is fairly marginalized in the process and we have heard that before. The victims of crime are often left out of the process. However, in Aboriginal justice systems, ceremony and prayer are part of the process. The process includes defining who is impacted by the crime so that it is larger and it includes all the people affected by the process in finding solutions. It focuses on the victim and also on communal rights and responsibilities. Both the victim and the offender feel a sense of justice has been accomplished in the resolution. It addresses it much more holistically.

• (1630)

Honourable senators, Aboriginal girls, as well as boys, deserve to grow up on safe streets in safe communities. They also deserve to go to school and graduate.

On a final note, honourable senators, I would like to focus on the importance of education in addressing the issue of the overrepresentation of Aboriginals in prison.

It should come as no surprise that close to half of the Aboriginal youth in custody had dropped out of school prior to their first offence, but what is truly interesting and should be on the forefronts of policy-makers' minds is that education has a significant impact on Aboriginal incarceration rates. According to Statistics Canada, in Saskatchewan the incarceration rate among Aboriginal young adults with a high school education was four times lower than among those without a high school diploma. We need to invest in Aboriginal youth and make sure they graduate from high school.

**Some Hon. Senators:** Hear, hear.

**Senator Dyck:** There is a direct correlation between having a high school diploma and lower incarceration rates for Aboriginals.

As honourable senators know, education for on-reserve Aboriginal students has been chronically underfunded for decades. Aboriginals have the highest high school dropout rate, at 34 per cent, across our country, this wonderful country of Canada. In Saskatchewan, the rate is 49 per cent; half of Aboriginals do not get their high school diplomas.

This government fails to recognize the facts right in front of them. Instead, their priority piece of legislation is to get tough on crime rather than get smart about education. Their crime agenda will cost anywhere from \$9 billion to \$19 billion and will push more Aboriginals into custody and hold them there longer, with no plan to provide them with the necessary culturally relevant and successful programs —

**The Hon. the Speaker *pro tempore*:** I regret to inform the Honourable Senator Dyck that her 15 minutes is up. Would she like to ask the chamber for more time?

**Senator Dyck:** Yes. I need about one minute.

**The Hon. the Speaker *pro tempore*:** Five minutes is granted.

**Senator Dyck:** Honourable senators, I do not support the passage of Bill C-10. I believe that the impact of this legislation on our Aboriginal peoples would make it far worse for them.

To conclude, as the police chief of Saskatoon, Clive Weighill, stated, "Until we can change the social contributors to crime, we're not going to see big decreases" in crime rates. The facts cannot be any clearer; the solution is not Bill C-10.

**The Hon. the Speaker *pro tempore*:** Would the Honourable Senator Dyck accept a question?

**Senator Dyck:** Yes.

[*Translation*]

**Hon. Pierre-Hugues Boisvenu:** Honourable senators, Senator Dyck said that it would cost \$17 billion to implement Bill C-10. Could the senator tell us where she got that figure? If she got it from the analysis carried out by the IRIS research institute, could she tell us whether she read this analysis?

[*English*]

**Senator Dyck:** I believe I said this could cost anywhere from \$9 billion to \$19 billion, although \$17 billion falls in the middle. I do not have my references in front of me, but I can get the honourable senator the source later.

[*Translation*]

**Senator Boisvenu:** I would very much appreciate that. The honourable senator will understand that an amount that high is misleading. I would appreciate having the document in question.

[*English*]

**Senator Dyck:** If I may, the cost is not the significant factor here. The main issue here is the impact of this bill on Aboriginal women and girls, on Aboriginal people as a whole.

**Some Hon. Senators:** Hear, hear.

**Hon. Grant Mitchell:** Honourable senators, I would like to say that the government's Bill C-10 has been put into stark relief and contrast by the comments by Senator Dyck, who has pointed out a much more compassionate, effective, enlightened way of structuring a criminal justice system for certain groups in our society and demonstrated just how unfair the structure of Bill C-10 would be to some of those certain groups in our society.

My comments will focus on the other side of that stark contrast just to underline, and it has been said before here a number of times, but to underline how poorly structured this bill is, how wrong-headed it is, how damaging it will be both to victims who seem to be — in fact, are, I am sure — the government's concern and to victims who will be created in turn as an unintended consequence, unfortunate as it will be, by this government's Bill C-10.

One of the most key, although not the key, elements of this is the value for money, the cost benefit of this approach to a crime agenda. It is difficult to assess exactly what the costs will be. It may be equally difficult to assess what the government thinks exactly any positive results will be because in both cases we have not received any kind of structured cost-benefit analysis at all. In fact, all the evidence that they would allude to, however vaguely, is contradicted by study after study after study, the science of crime agenda, which demonstrates that what they are doing is going down exactly the wrong track.

There have been numbers. They range from \$500 million extra cost annually for the bill that has been passed within the last year or so, the one that says you cannot give credit for time spent in remand centres before sentencing, and that has increased the prison population to the tune of about \$500 million a year. The upper end seems to be about \$19 billion in a study presented by Quebec. Somewhere in between, there are a lot of big numbers. It is hard to get a hold of it. I thought I would take a number that is perhaps a little more manageable, that people can get their head around, and put into perspective what exactly that portion of this crime agenda would do.

I said let us take \$100 million and see what that would do by way of increased incarceration, if you believe for a moment that incarceration is actually the panacea for crime prevention and crime reduction that the government says it is.

Imagine this: \$100 million dollars will build 416 new cells, just 416 new cells, and put 416 people into those cells for one year. So \$100 million takes 416 individuals off the streets for one year. Who would those 416 individuals be? They might be 416 18-year-olds who had six marijuana plants and who had no business having to go to prison. There is no justifiable reason to put those 416 young people in prison because they had six marijuana plants. It will not deter them, and it will not enhance their likelihood of offending less. That is to say, it will not reduce their likelihood of offending. In fact, it will actually increase it. That is 416.

Let us say that this bill in its application nets 4,000 such new inmates. That would mean that over 10 years, the bill would cost about \$6 billion. That is just 4,000 inmates. Take my province of

Alberta, about one tenth. That would be 400 newly incarcerated people over 10 years for about \$600 million — 400 people out of 3.4 million people, 400 people who probably do not even have to be in jail, who did not really do anything particularly criminal, who were not going to offend anyone else, and there was no victim; they were victimless crimes. That will somehow make the people of Alberta safer? Four hundred people out of 3.4 million people put in jail when they do not have to be there — that somehow will make Albertans safer? Four thousand people over 10 years out of 34 million people, and that is somehow going to make us safer? It defies the imagination.

If you went on, let us say it netted 10,000 new people. Let us say they could measure their success by putting 10,000 new people in jail who probably do not have to be there. That would cost \$12 billion. Ten thousand people out of 34 million people. It will have a negligible effect on any quality or standard of safety in our society, particularly because the numbers are relatively small, but particularly in addition because they probably do not need to be there, and it will literally cost a fortune.

• (1640)

What do we get for that? In summary, we will not get less crime; we will actually get more crime. All the studies underline time and time again that, if you put people in jail who do not need to be there, they will become better criminals. Recidivism will rise and we will have more crime. The studies are so clear and the science is so clear that it is very difficult to know how a government can stand without shame and argue that somehow this will be to the benefit of a society.

When confronted with that science, which the government cannot resist and they cannot contradict, they resort to the argument that they are doing this for victims. It was yelled out by one of the senators yesterday, "Who will speak for the victims?" The fact of the matter is that all of us should and do speak for victims, but this bill does not particularly speak for victims.

This is not a bill about psychological services for victims. It is not a bill about compensation for victims. It is a kind of bill about somehow helping victims if we are punitive to the people who victimize them. It might make some victims feel better, but really and truly it will create far more victims. Bill C-10 will not reduce the number of victims because it will not reduce crime. Therefore the bill will create far more victims. If the purpose of the bill is to fix victims, it is simply not going to do that and it will be very expensive in the process.

Honourable senators, there are far better ways to help victims. There is, of course, prevention of crime. You do not have to read very far or analyze very deeply to know that prevention is absolutely possible. Many of my colleagues have talked time and time again about that in this debate. There is certainly much literature on the subject of prevention and there is much evidence.

I want to mention a program that has started in Edmonton. It is an organization called YOUNCAN and it is designed to help young people at risk. A report was published about a young woman who has been literally saved by this program. She began drinking at 10 years of age. By the time she was 12 or 13, she said that she

loved drinking. It was all she wanted to do and she hated the thought of being sober. That young woman dropped out of school. She became addicted to alcohol, abused other substances and left home. Imagine what her chances were in life and what the odds were that she would end up in prison at \$120,000 to \$200,000 a year. The cost to keep a woman in prison can range to as much as \$200,000 a year. Imagine what that would have cost.

The YOUNCAN program, which deals with children and costs \$10,000 per individual child, has worked remarkably well with her. This is a program that teaches participants interview skills, resumé writing and conflict resolution through peacemaking circles. It gives them life skills with workshops about shopping on a budget, healthy eating habits, computer training and access to online facilities. The program gives them access to professional psychological and sociological services.

At 17, this young girl has now re-enrolled in school and she is sober. YOUNCAN has provided programs to help get her off a drug and alcohol addiction cycle. This is a young woman who has a chance in the future and is very less likely to end up in a prison at \$200,000 a year. The YOUNCAN program cost us \$10,000. The proof is in the pudding.

Interestingly, the cost of incarcerating a male in Canada is about \$120,000, but the cost of incarcerating a female can range from \$120,000 up to \$200,000. The female institutions are smaller and therefore there are not the same economies of scale. The cost for one year is \$120,000. In Canada, it costs \$170,000 to educate a child for 17 years. The juxtaposition shows that incarcerating someone who could have been saved for \$10,000 will instead cost \$120,000 per year. Educating that same person for 17 years, from kindergarten through to a first-level degree or diploma, is \$177,000. There is no cost benefit to incarcerating people in the way that this bill contemplates.

Honourable senators, there is all kinds of science that begins to suggest there is a solution that will work, other than the "solutions" this government has chosen. You would think that if the government truly wanted to solve the problem, they would think to pick out programs like YOUNCAN, preventive programs and other programs, some of which are applied within institutions, and do some fundamental analysis.

We have heard a great deal in the debate about the U.S. and about how Texas has pointed out to Canada how we are going down the wrong trail. I have not yet seen this in the debate, but I will mention the work done in the State of Washington.

The State of Washington decided about 10 years ago that this form of incarcerating people and being hard on crime was not productive and did not work. They took a very scientific, proactive, organized approach to analyzing programs that might be in place elsewhere in the world to see if they would work. They brought it down to numbers and they did cost-benefit analysis.

By doing this, the government of the State of Washington was able to identify public policies that have been shown to improve the following outcomes: They have reduced child maltreatment; they have reduced crime; and they have improved and increased

education, labour earnings, mental health, public assistance, public health and substance abuse — all the things that could lead to incarceration. They have a well-defined and developed methodology, with four points in their structured approach.

The first point is that they systematically assess evidence on what works and what does not work to improve outcomes. They assess best practices. Second, they calculated costs and benefits for Washington State and produced a kind of *Consumer Reports*-like ranking of public policy options. Third, they measured the riskiness of their conclusions by testing how bottom lines vary when estimates and assumptions change. That is to say, they test to see what the risk is that they could get the outcomes that they predict from these programs or that they will not. These are highly sophisticated kinds of analyses. Where feasible, they provide a portfolio analysis of how a combination of various public policy options could affect state-wide outcomes of interest.

Critical in this process of analysis is that the state presents these as monetary estimates from three distinct perspectives, which are: the benefits that accrue solely to program participants, financial and otherwise; those received by taxpayers, which of course is a concern to everyone on that side of the house and everyone on this side of the house, too; and any other measurable, nonparticipant and non-taxpayer monetary benefits. They put this right down to money. Money is invested in a program. Do you get money back? Do you get more than you invested? Lo and behold, they actually do, and they have lists from over 10 years of programs that they have structured and analyzed in this way.

For example, they have juvenile justice preventive programs. One is called the Functional Family Therapy Program, where they work with a family of a juvenile offender or a juvenile in distress. For this program the total benefit assessed was about \$38,000. The taxpayer saves \$8,500 because of this program — this is per person — and the non-taxpayer, that is to say employers, health care systems and the individuals themselves, would save about \$29,000.

The total savings are \$38,000, real money, to taxpayers, potential victims and the actual person in distress. What did that cost? It cost \$3,190 to implement. The return on their investment of \$3,100 is about 10 times, therefore it can be ranked. They say the return, the benefit-to-cost ratio, is about 11:86 and the actual rate of return on investment is 641 per cent. In this day and age, I do not think anyone can suggest any social investment that gives you that. These are hard core numbers, analyzed carefully, analyzed clearly, checked and double-checked, and brought down to dollars.

On the other hand, there is this Scared Straight Program, which we are seeing so much on television, and of course it sells television. I am sure it is very gratifying to some people to see young people being treated in that harsh way, but Scared Straight does not work. The total benefits are a negative \$6,000. It does not help these kids that go through it. It is cheap. It only costs \$63 to put them through it, but it does not do anything. It has negative benefits.

• (1650)

They have listed all of these programs under juvenile justice, adult criminal justice and child welfare. They point out that the Nurse-Family Partnership for low-income families has a return of \$20,000 per child put into that program and that that is real money that keeps people out of incarceration, which costs as much as \$120,000 a year.

Unfortunately, I could find no such analysis in Canada. All of these programs to which I am referring are preventive programs, so they prevent people who are not in jail from ever going. Some of them who have been come back.

**The Hon. the Speaker:** The honourable senator's time has expired. Are you asking for more time?

**Senator Mitchell:** Yes.

**The Hon. the Speaker:** Honourable senators, is more time granted?

**Hon. Senators:** Agreed.

**Senator Mitchell:** Thank you.

In Canada the figures are not as clear. There is some information, although it is not from the government and not from a structured analysis. The Conference Board of Canada has done some studies of correctional programs, that is programs given to people in jails. These are not programs for people who might be diverted from going to jail.

The study says that there have been about \$58 million worth of these programs in our correction system within the last couple of years — a \$20-million cost and a \$38-million benefit. The good news is that there is a \$38-million benefit. The bad news is that the money for these programs is less than 2 per cent of the \$3 billion that we spent last year on corrections. The other bad news is that these are programs that you get, if you are lucky, only once you are in jail. They are not there to help prevent you from going to jail. The other unfortunate news is that there are nowhere near enough of these programs.

There is a medium security facility in Canada with 461 inmates. Eighty per cent of the inmates in medium security prisons in Canada are known to have drug and alcohol abuse programs, and 50 per cent of them are intoxicated when they offend. Of the 461 people in this jail, 80 per cent have drug and alcohol abuse problems. Only 25 of the 461 inmates are in a drug or alcohol program in that jail, while there are probably another 300 or 350 who need such a program. Those programs are not particularly expensive. They sure do not cost the \$120,000 a year that it costs to incarcerate an individual.

The situation is even worse for women. There is one forensic women's clinic in the jail system in Canada serving the 600 women who are incarcerated in Canada. Worse, that forensic centre is not in a women's institution; it is in men's institution, and it serves only a handful of people. There are estimates that as many as 80 per cent of incarcerated women have serious mental health

problems and a large percentage have probably been brutally sexually, physically or psychologically abused at some point in their lives. Yet we have one centre, which will be far away from the support of family and friends in their communities. Only a handful of the women who need help get it, and those women have to go to a male institution to get the help.

We will spend up to \$19 billion to incarcerate more people, and we will not give them the kind of services that would help to prevent the need to incarcerate them.

What is really galling about this and what is more important in many ways than even the cost benefit is that this will simply hurt young people. The 18-year-old who has not yet reached full maturity and makes an error of judgment by growing six marijuana plants will go to jail and very likely have his life ruined. He will never be able to leave the country because he has a criminal record and he will probably not get a good job. He will never be able to join a professional group. All this will be as a result of having made one mistake, probably not all that serious a mistake and not having victimized anyone but himself. He will have his life literally ruined.

To summarize, Bill C-10 is not going to reduce crime. We know that. In fact, it will increase crime. It will not reduce victims, because if it increases crime it will increase the victimization of Canadians, and it will cost a huge amount of money. We could be smart and state of the art with that money. We could inspire our corrections people and others to study and implement programs that could work effectively and get real results. Rather, we will have none of that and we will hurt people.

Yesterday I said that the Canadian Wheat Board bill was the triumph of ideology over common sense. Today I ask: If this bill does nothing that is good and much that is bad, why would the government go ahead with it? I think it is a political calculation for which they will get some votes. They do not care about what this will do to the people in the system and the people who will be victimized. Instead, they care about the votes. That is a very ruthless political calculation. It is a sad day that we are seeing it with this bill.

**The Hon. the Speaker *pro tempore*:** Senator Mitchell, will you accept a question?

**Senator Mitchell:** Yes.

*[Translation]*

**Senator Boisvenu:** Honourable senators, Senator Mitchell spoke about the rather touching case of a 17-year-old girl who was rehabilitated with the help of a program. If we take a minor case and generalize, it gives the impression that Bill C-10 will increase the number of young Canadians in prison.

Even though I do not like to talk about it, I would like to talk about the other side of the story. My daughter was murdered by a repeat offender who had attacked a woman in 1997 and who had to serve two months in the community. This man was also

arrested for impaired driving in 1998, for which he served four months in the community. In 1999, he was arrested again for sexually assaulting a woman over the course of 12 hours. He received a sentence of 36 months in jail and served only three months.

If this man had received a sentence longer than three months for raping a woman and if he had had the services of a federal prison instead of a Quebec prison, do you think that we could have rehabilitated this man and that my daughter would still be alive today?

*[English]*

**Senator Mitchell:** There is nothing that any of us can say to alleviate the pain that the senator clearly and obviously feels at the loss of his daughter in that horrible way. I understand as well as anyone who has not experienced that could.

Perhaps if we had caught that offender earlier in his life and had had programs to divert that offender from the path that took him to where he ended up, he would not have committed that crime. Perhaps if we had had him in a violence prevention or a substance abuse program, which have had a good deal of success, he would have been diverted.

Those are possibilities, but I am not convinced that this bill would have kept that offender in any longer, because this bill actually provides for less severe penalties for certain kinds of sexual offenders than it does for other offences. I am not sure that this bill addresses it.

I wish the honourable senator's government was developing programs that would solve that problem. If Senator Boisvenu is convinced that this bill does, we will have to disagree. I do not think this will solve that problem. I wish it would, but I think it will not.

**Hon. Joseph A. Day:** Honourable senators, this bill has five parts and we have heard a lot of conflicting comments with respect to the cost of the various initiatives in it.

I would like to reflect on those and speak on this tomorrow. Therefore, I would ask that the matter be adjourned in my name.

(On motion of Senator Day, debate adjourned.)

## BUSINESS OF THE SENATE

**The Hon. the Speaker *pro tempore*:** Honourable senators, the time is approaching five o'clock, at which time the bells must ring for the 5:30 vote.

Call in the senators.

[ Senator Mitchell ]

• (1730)

**MARKETING FREEDOM FOR GRAIN FARMERS BILL****THIRD READING**

**The Hon. the Speaker:** Honourable senators, it was moved by the Honourable Senator Plett, seconded by the Honourable Senator Patterson:

That Bill C-18, An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts, be read the third time.

Motion agreed to and bill read third time and passed, on the following division:

**YEAS**  
**THE HONOURABLE SENATORS**

Andreychuk	Marshall
Angus	Martin
Ataullahjan	Meighen
Boisvenu	Meredith
Braley	Mockler
Brazeau	Nancy Ruth
Brown	Neufeld
Carignan	Nolin
Champagne	Ogilvie
Cochrane	Oliver
Comeau	Patterson
Demers	Plett
Di Nino	Poirier
Duffy	Raine
Eaton	Rivard
Finley	Runciman
Fortin-Duplessis	Segal
Frum	Seidman
Gerstein	Smith ( <i>Saurel</i> )
Greene	Stewart Olsen
Housakos	Stratton
Johnson	Tkachuk
Lang	Verner
LeBreton	Wallace
MacDonald	Wallin—51
Manning	

**NAYS**  
**THE HONOURABLE SENATORS**

Baker	Hervieux-Payette
Banks	Hubley
Callbeck	Jaffer
Campbell	Losier-Cool
Chaput	Lovelace Nicholas
Cordy	Mahovlich
Cowan	Merchant
Dallaire	Mitchell
Dawson	Moore

Day	Munson
De Bané	Peterson
Downe	Poulin
Dyck	Poy
Eggleton	Rivest
Fairbairn	Robichaud
Fraser	Tardif—33
Furey	

**ABSTENTIONS**  
**THE HONOURABLE SENATOR**

Cools—1

[*Translation*]

**DISPOSITION OF DEBATE—MOTION WITHDRAWN**

On Motion No. 19 by the Honourable Claude Carignan:

That, no later than 5:30 p.m. on Thursday, December 15, 2011, the Speaker shall interrupt any proceedings then before the Senate and, notwithstanding any provisions of the Rules, put all questions necessary to dispose of all remaining stages of Bill C-18, An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts, including the motion for third reading, forthwith and successively, without further debate, amendment or adjournment, and with any standing vote requested in relation thereto not being deferred but being taken immediately, with the bells to ring only for the first vote requested and only for 15 minutes;

That, if proceedings on the bill are completed earlier than the time indicated above, any standing vote requested in relation thereto shall, notwithstanding rule 67(2), be deferred, if there is a request for deferral by one of the whips, to no later than 5:30 p.m. on Thursday, December 15, 2011; and

That the Senate neither suspend pursuant to rule 13(1) nor adjourn on Thursday, December 15, 2011, until all proceedings relating to Bill C-18 have been completed.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, given that Motion No. 23 has become hypothetical, I ask that it be withdrawn.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

(Motion withdrawn.)

• (1740)

[English]

**STUDY ON FEDERAL GOVERNMENT'S RESPONSIBILITIES TO FIRST NATIONS, INUIT AND METIS PEOPLES**

**THIRD REPORT OF ABORIGINAL PEOPLES COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE ADOPTED**

On the Order:

Resuming debate on the motion of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Greene, that the third report of the Standing Senate Committee on Aboriginal Peoples, entitled *Reforming First Nations Education: From Crisis to Hope*, tabled in the Senate on December 7, 2011, be adopted and that, pursuant to Rule 131(2), the Senate request a complete and detailed response from the government, with the Minister of Aboriginal Affairs and Northern Development Canada being identified as Minister responsible for responding to the report.

**Hon. Lillian Eva Dyck:** Honourable senators, I rise today to speak to the report on education of the Standing Senate Committee on Aboriginal Peoples entitled *Reforming First Nations Education: From Crisis to Hope*.

First, I would like to acknowledge all the hard work of the members of the committee on both sides of the house. We started this study in April 2010, and through the witnesses and hard work of the members of the committee and all the questions and comments that they had, we were able to produce a report that I think is quite outstanding. I thank all members of the committee for that.

I would also like to thank the clerk of the committee, the analysts, the communications person, the translators and all the staff involved. As you know, when we travel we have to take a lot of staff with us. They all enabled us to do our work exceptionally well, and I thank them for that.

I especially want to thank the chair of the committee, the Honourable Senator St. Germain. He chaired the committee very well. He made sure that we worked together exceptionally well, and consequently we produced a report that, as I said, is quite exceptional.

We had numerous witnesses appear before the committee. We had site visits. We went to the Prairies and to Atlantic Canada. We had actually planned to go to some of the communities in Northern Ontario, close to some of the communities like Attawapiskat. Unfortunately, this fall those plans did not materialize, but that is what we had intended to do. We held public hearings.

We had a round table with experts in October, which was exceptional. We had Marlene Atleo, Bruce Stonefish, Colin Kelly, James Wilson and Harvey McCue. We had a focused discussion that informed the committee exceptionally well. It was that round table that convinced me that legislation was the way we should go.

As I mentioned earlier in my speech with regard to Bill C-10, funding of Aboriginal education is an important issue, but all reports up until now have focused on the inequities of funding and the cap that was put on at 2 per cent in 1996. All the reports up to now have said we should remove the cap and equalize funding. That is what they focused on.

Our committee went much further than that. We saw — and our chair had this lovely analogy — that we needed to devise a new vehicle. In fact, in my mind, the vehicle was not even gas-powered. The vehicle on reserve is like a horse-and-buggy model of education.

**Senator Munson:** Your Honour, I cannot hear the speech.

**The Hon. the Speaker:** Order. Honourable senators, discussions and other expressions should be taken outside the chamber.

The Honourable Senator Dyck has the floor.

**Senator Dyck:** Thank you, Your Honour.

As I was saying, on-reserve education is like the horse-and-buggy vehicle. What we, as a committee, have come up with is the space-age vehicle. It is a rocket ship. We are going to Mars and are heading for the moon.

It turns out there is inequitable funding, but there is no school board on reserve. There are no educational authorities. There is nothing that does all that wonderful strategic planning, nor the structures needed to support a good educational system. The money that is given to reserves is unequal, but it does not even fund the essentials like computer labs, libraries, First Nation language instruction, curriculum development and all those things that make for a good education.

As you all know, the national expert panel is up and running, and they hope to have their report by the end of the year. I am glad our committee was able to release our report before the national expert panel, because they have been on the road for far less time and would have had far less opportunity to hear all the witnesses that we, as a committee, have heard. However, it sounds as though they will come up with similar recommendations.

Our report contains four main recommendations. First, as I said, we are recommending a federal education act that will be jointly developed with First Nations and First Nation educational authorities. It will be an education act that is not imposed. It will be opt-in legislation. When you opt in, you will be able to repeal the sections related to education within the Indian Act that are that horse-and-buggy model. Those sections were the ones that allowed the residential school system to be imposed upon First Nations people.

The education act will recognize First Nation authority for on-reserve elementary and secondary education and will establish second- and third-level education structures. It will establish First Nation school boards and First Nation educational structures.

When we traveled across the country, we saw developments along those lines, with agreements and tripartite agreements, but no one has come to the level that other provincial or territorial off-reserve schools have. This will be the way to go. This will create a system that is equivalent to what provincial schools have. I firmly believe this will make a tremendous difference.

Second, the committee recommended statutory-based funding rather than the contribution agreements that came to Aboriginal Affairs and Northern Development on a yearly basis. With contribution agreements, the money is not just earmarked for education. The individual First Nations do not necessarily even know how much money they will get. It creates an unstable situation, which does not allow for long-term planning. As all honourable senators know, in order to educate, you need to be able to have security of funding and long-term planning.

The legislation will allow the inclusion of a comprehensive formula that will address the funding inequities. The formula will allow the individual First Nations to apply for funding for such things as computer labs and libraries, and apply for extra funds if they live in a remote area such as in Attawapiskat. It will allow a formula to be developed to cover the cost of First Nation language instruction and the costs of things like incorporating, within the curriculum, First Nation content.

This will allow on-reserve schools to have a system that is comparable to schools located off-reserve.

The funding methodology will be developed in consultation with First Nations so that the formula then will be adapted for specific needs. As I said before, it will provide stable funding to allow long-term planning.

The third recommendation is the joint development of a Canada-First Nation action plan for educational reform, which will include a timeline, agreed upon by both parties, and will allow for the opting in.

Some of the First Nations that we visited were in good shape. In Nova Scotia we visited several Mi'kmaq schools, and their graduation rates were the opposite to the rest of Canada. They were graduating about 70 per cent of their Aboriginal students from high school, where the rest of Canada was failing about 70 per cent. They were coming along nicely, but they were having difficulty because the mechanism of funding did not allow them to develop First Nation curriculum or language instruction.

The fourth recommendation is developing a joint task force to oversee development of educational reform and to monitor progress. It calls for an annual review for five years, reporting to Aboriginal Affairs and Northern Development and to the National Chief of the Assembly of First Nations.

• (1750)

This joint task force is a critical component because it means that we are keeping tabs on what is happening. It will allow this process to proceed; it will be monitored, so, hopefully, the report will not sit on the shelf because they will have to report back to say what is happening, and let us move this thing along.

I would like to put our report into a bit of context. I know many other honourable senators are engaged in the concept of equality of education. In my office, I have stacks and stacks of reports on Aboriginal education, most of which talk about the gaps in educational attainment. They have studied to death what the problem is, but few have come up with any solutions. I think our committee, working together as well as we have, has come up with a solution that, as I said, is in the space-age era.

**Some Hon. Senators:** Hear, hear!

**Senator Dyck:** When the Auditor General was at the committee the other night, he also indicated that we need the structures in place. We need statutory-based funding for education, for drinking water and so on. Stable funding must be there. That echoes what the Auditor General said.

As I mentioned, the high school graduation rates within the Aboriginal communities across the country, for the most part, are bad. It is critical that we address this issue because, as we know, we have a rapidly growing Aboriginal population. I call it the "brown baby boom." With the "brown baby boom," we have this young group that is going to school now. If we do not give them a decent education, they are doomed to failure. They will end up in the prison systems. They will be working the streets. It is imperative that we start now because 50 per cent of the Aboriginal population is under the age of 25. There is also a big bubble coming now that is under the age of five. The time to act is now. I am very glad to have been on this committee because I believe this committee's work will transform the lives of those Aboriginal children.

**Some Hon. Senators:** Hear, hear!

**Senator Dyck:** There is a need not only for mainstream skills within the Aboriginal community. We also have to have the same education that other Canadians have in order to understand what is going on around us. For instance, we must be able to understand the complex documents that Aboriginal and Northern Affairs sends to on-reserve schools or to bands asking for audits and reports. You need a high level of literacy and numeracy in order to function in this modern world. This will allow that to happen. However, I think the critical thing is it will also allow the development of a complementary stream that will teach First Nation languages and culture. The content will be there, so that these kids can grow up with knowledge in both worlds, an understanding of their own culture, and a feeling, a great sense of pride and self-esteem in who they are. That has not happened in most of Canada. So many children now — and it breaks my heart to see them — are ashamed of who they are because they are not represented positively within the mainstream educational system.

Once we get these kids learning about their own history, they will be so proud. We saw that on our trip. We went to the Onion Lake Cree immersion school in Saskatchewan. We saw those little kids in assembly, listening to their teachers in Cree. It was so inspiring. They were happy and feeling good about themselves. We saw that in Nova Scotia when we went to Eskasoni Elementary & Middle School. We saw those little kids singing in their own language, and we saw their language on the wall in

syllabics. We saw all of this, and it was terrifically inspiring. We must keep that up. We must go past those early years so they grow up to be competent, capable and happy adults.

**Hon. Senators:** Hear, hear!

**Senator Dyck:** On a personal note, I have spent more than 20 years in my volunteer life speaking about the importance of education. I firmly believe I got to the Senate because I went around to various schools talking to kids, little kids and big kids, talking about how they needed to stay in school. I was kind of like their role model. I had been an advocate for them. I feel tremendously honoured to be part of this report. I feel tremendously honoured.

**Hon. Senators:** Hear, hear!

**Senator Dyck:** As I said, it is very different from the myriad of other reports. We are so lucky to have such talented people on the committee working for us, and we came up with this vision. This vision will change the face of Aboriginal Canadians. It gives hope and inspiration to the adults, and it gives the children the passport to being productive, happy, contributing members of Canadian society.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** Are honourable senators ready for the question?

**Hon. Senators:** Question.

**The Hon. the Speaker:** It was moved by Honourable Senator St. Germain, seconded by the Honourable Senator Greene, that the third report of the Standing Senate Committee on Aboriginal Peoples, entitled, *Reforming First Nations Education: From Crisis to Hope*, be adopted.

Is it your pleasure, honourable senators, to adopt the motion?

(Motion agreed to and report adopted.)

#### RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

#### SECOND REPORT OF COMMITTEE— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Braley, seconded by the Honourable Senator Ataullahjan, for the adoption of the second report of the Standing Committee on Rules, Procedures and the Rights of Parliament, (*Amendment to the Rules of the Senate, relating to leaves of absence and suspensions*), presented in the Senate on November 29, 2011.

**Hon. George J. Furey:** Honourable senators, I am pleased today to join in expressing my support for the changes proposed in the second report of the Standing Committee on Rules, Procedures

and the Rights of Parliament. I want to thank Senator Braley for his remarks and also for chairing the subcommittee, which, in fact, returned a unanimous report to the full committee who, in turn, accepted the report unanimously.

As Senator Braley noted when he moved the adoption of the report, the changes are simple but significant. The committee has proposed adjustments affecting rules 139 and 140. These changes cover three distinct points in the rules: one, the process for triggering a leave of absence; two, the issue of a senator's access to resources other than the sessional allowance while on leave of absence; and, three, the matter of a senator receiving sessional allowance after a finding of guilt but before the commencement of a suspension.

Under the current system, the senator charged with an indictable offence is required to provide a copy of the indictment that will be tabled in the Senate and thus trigger the suspension. The committee felt it would be prudent to provide an option whereby the Speaker could table the necessary documents in the event that it was considered a delay was excessive.

The second change would give the Standing Committee on Internal Economy, Budgets and Administration the authority to suspend a senator's access to some or all of the Senate's resources while on a leave of absence. This is an oversight provision which does not presently exist.

Finally, during a period between a senator being found guilty of an indictable offence and being sentenced, the changes would empower the Standing Committee on Internal Economy, Budgets and Administration to suspend a senator's sessional allowance if they felt it was appropriate in the circumstances.

Honourable senators, let me underscore that with these proposed changes, the essential elements of the rule and the current system will still stay in place. A senator on leave of absence would normally continue to have access to resources to fulfil his or her representative roles.

• (1800)

However, with the proposed changes, there will now be oversight and control exercised by the Standing Committee on Internal Economy, Budgets and Administration. I believe that the proposals in the second report strike a reasonable balance by updating the existing rules with oversight provisions, and I urge that all my colleagues support the report.

**The Hon. the Speaker:** Are honourable senators ready for the question?

**Some Hon. Senators:** Question.

**Hon. Anne C. Cools:** Honourable senators, I believe Senator Carignan —

**Hon. Claude Carignan (Deputy Leader of the Government):** I believe that Senator Cools wants to speak on this report, but she is not ready to speak and she needs more preparation time.

**Senator Furey:** For clarification, honourable senators, there are two reports from the Rules Committee before this chamber. One deals with some minor changes to the rules and updating the language. I believe a number of senators want to speak to that one.

This particular report speaks only to the circumstances in which a colleague finds himself in the unfortunate position of having been charged with an indictable offence. The only changes made to the rules provide oversight in the circumstances that I just outlined, which the Rules Committee thought was appropriate after we had gone through a situation where the rule was actually tested. We thought it was time to review the rule and update a couple of provisions that do not change the rules but merely provide oversight.

I am not sure, Senator Cools, if it is the first report you want to speak to or do you want to speak to both of them?

**Senator Cools:** Honourable senators, there is no confusion in my mind between the two reports. I have not mistaken one for the other.

I was not aware that there was such a rush to vote on this particular report. I only learned this very recently, within the last few hours. I had been planning to speak in a very fulsome way because I have some concerns for the state of the law on which these proposals are made. These are not light or trivial matters that can easily be reckoned with.

I had believed we were into a care-taking mode in these last few days to get supply bills and do those kinds of things that need to be done to recess for Christmas. I was waiting for the chair to speak.

I would like to move the adjournment of the debate. This report is not a pressing or urgent matter.

**The Hon. the Speaker:** Honourable senators, to clarify, we are into debate. Senator Furey has finished and we have an indication that Senator Cools wishes to participate in the debate, but not right now.

Are there any other senators who would like to participate in the debate now? If not, Senator Cools has the right, and she has put forward the motion, to adjourn the debate in her name.

(On motion of Senator Cools, debate adjourned.)

[Translation]

#### BUSINESS OF THE SENATE

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, as it is now after 6 p.m., I suggest that we not see the clock in order to continue with the remaining items on the Orders of the Day and wait for confirmation that the Governor General has signified Royal Assent to Bill C-18.

[English]

**The Hon. the Speaker:** Honourable senators, it now being 6 o'clock, under the rules, I am to leave the chair to return at 8 o'clock, unless I get guidance from the whips or from the leaders.

Is it proposed that I do not see the clock?

**Hon. Senators:** Agreed.

#### STUDY ON ISSUE OF SEXUAL EXPLOITATION OF CHILDREN

THIRD REPORT OF HUMAN RIGHTS COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE—DEBATE ADJOURNED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Human Rights entitled, *The Sexual Exploitation of Children in Canada: the Need for National Action*, tabled in the Senate on November 23, 2011.

**Hon. Mobina S. B. Jaffer:** Honourable senators, 61 per cent of all sexual assault victims are children; 86 per cent of sexual assaults are perpetrated by individuals known to the victim. Every year, there are 9,000 reported sexual assaults against children in Canada. Over 80 per cent of these child victims are girls.

Considering that the overwhelming majority of sexual abuse goes unreported, this is exceptionally troubling. The sexual exploitation of children is an issue that demands our attention, as it is deeply rooted in our homes, in our families and in our communities. It is an issue that is not at the margins of our society, but rather at the very centre. It is happening to the children we know, by the men and women we know.

I would like to share a personal experience with you. Every few months, I walk on the streets of Vancouver at night to see what is happening in my city. Sometimes I walk with people who are doing the homeless count, and sometimes on a very cold night to convince people to seek refuge in a shelter.

One day I met Christina. She was wearing a very thin, pretty dress on a cold night. She was freezing. I gave her some hot coffee and while drinking coffee, we sat and had a chat. I asked her how old she was. At first, she told me she was 16, but later on admitted she was 12.

She was dressed beautifully with a lot of makeup, very expensive high heel shoes and an expensive purse. She told me she had run away from her reserve not only to escape the violence that she was being subjected to, but also because she felt that there were no opportunities for her there. She explained to me that she was rescued by a very kind gentleman who bought her the beautiful things she had. She had never owned such beautiful things in her life. She was very proud of her new status.

She said she was very happy until this very kind gentleman lost all his money. He asked her to work on the streets for a short time to help him out financially. At first, she resisted and she noticed he was turning his attention to other girls and was becoming mean to her. He told her that if she loved him, she would do what would help him out by working on the streets.

While narrating this story, a car stopped with three men in it and she ran toward that car. She entered the car and it sped away. I never completed my conversation with Christina. Every time I walk or pass that neighbourhood, I look for her. Her very innocent face haunts me.

When we started this study, I knew this was to reach out, to find ways to support young Christinas all over Canada.

[Translation]

Honourable senators, in June 2009, the Standing Senate Committee on Human Rights began its study of the sexual exploitation of children in Canada. This study followed the committee's 2007 report entitled, *Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, which had also drawn everyone's attention to the commercial sexual exploitation of children.

After hearing from more than 40 witnesses who generously agreed to share their knowledge and experience in this matter, on Wednesday, November 23, the Standing Senate Committee on Human Rights had the honour to table its third report entitled, *The Sexual Exploitation of Children in Canada: the Need for National Action*. In this report, the committee addresses the sexual exploitation of children in Canada in an attempt not only to understand the scope and prevalence of this scourge, but also to suggest possible ways of combatting it.

In addition, the report contains eight recommendations on how the federal government can establish reliable policies, programs and services to help children avoid sexual exploitation, break free from it and heal the wounds caused by sexual abuse.

• (1810)

[English]

Our report includes eight recommendations, many of which I will touch upon today. These recommendations can be summarized as follows.

Recommendation 1: Our committee recommends that the government ensures that a gender-based analysis is incorporated in research, as well as in the development and implementation of government-based programs and policies.

Recommendation 2: Our committee recommends that support be provided to Aboriginal communities.

Recommendation 3: Our committee recommends that the government create a national database of research and statistical information on the sexual exploitation of children in Canada.

Recommendation 4: Our committee once again recommends that the government introduce legislation to establish an independent children's commissioner.

Recommendation 5: Our committee recommends that the government improve the justice system so that it better recognizes and accommodates the needs of the child victims of sexual exploitation before and after court proceedings.

Recommendation 6: Our committee recommends that the government make it one of its top priorities to ensure that an adequate and consistent level of services for all children dealing with sexual exploitation is available across the country.

Recommendation 7: Our committee recommends that the government actively work with businesses and private sector organizations to support and promote initiatives directed towards combating the sexual exploitation of children.

Recommendation 8: Our committee recommends that the government dedicate appropriate resources and funding to promoting a preventive approach to the sexual exploitation of children.

Throughout our committee's study, we examined a broad range of issues that fall under the umbrella of sexual exploitation. These issues included domestic sexual abuse, sex tourism, child pornography, children exploited toward prostitution and the luring of children over the Internet. After studying all these issues our committee learned that all of these forms of sexual exploitation had one thing in common: They all included the violation of a child's inherent human dignity for the sexual gratification of adults.

Honourable senators, a matter that immediately grasped the attention of our committee was the prevalence of sexual exploitation among Aboriginal children. Although Aboriginal people make up only 5 per cent of our population, Aboriginal youth account for at least half of the young people who are sexually exploited. In addition, according to the Native Women's Association of Canada, 90 per cent of street-involved sexually exploited youth in some Canadian cities are of Aboriginal ancestry.

A number of factors contribute to the exceedingly vulnerable position that Aboriginal children are consistently placed in. For example, Aboriginal communities experience lower levels of education, higher levels of poverty, overcrowded and poor housing, and lack of access to basic social support services. With this in mind, our committee recommended that the Government of Canada conduct and support research into the particular needs of Aboriginal communities with respect to sexual exploitation of children.

The committee also recommends that the government develop policies that are culturally sensitive to the needs of Aboriginal peoples and designed to reduce the incidence and harms of sexual exploitation in Aboriginal communities on and off reserve.

[ Senator Jaffer ]

## [Translation]

Honourable senators, our committee heard from a number of witnesses who have been working very hard to reduce the prevalence of this scourge in Canada. Many expressed frustration about the fact that so little research is being done on this very serious problem and that we have so little information on the subject. This serious shortage of information not only prevents them from helping abused children, but it also helps maintain the secrecy within which the perpetrators of these crimes can continue abusing children.

That is why our committee concluded that a national strategy is needed in order to create a databank and conduct research to provide reliable data to relevant stakeholders.

Thus, the committee recommends that the Government of Canada undertake to create a national databank of research and statistical information on the sexual exploitation of children in Canada. This databank will be developed with government departments, non-government organizations, women's groups, Aboriginal people, service organizations and children.

The data and research should be made available to the public so that it can assist law enforcement agencies, social service agencies and other relevant stakeholders in combatting the sexual exploitation of children.

## [English]

Unfortunately, our committee is well aware of the challenges associated with generating data and research around this very sensitive issue. These challenges stem from the fact that children who have been victims of sexual abuse do not speak out against their perpetrators. Instead, they simply suffer in solitude.

Honourable senators, we must remain mindful that the majority of children who have been sexually exploited have endured this abuse from adults whom they know and trust. Throughout the study, our committee learned that most adult perpetrators are male and are known to the child. They are family members, neighbours, business associates and friends.

After being sexually abused by an adult whom they know and trust, many of these children, as a consequence, experience great difficulty continuing to place their trust in adults, even if it is for the purpose of seeking help. It is imperative that we restore this trust.

Our children need to know that their voices will be heard and their rights respected. These are our Canadian children. That is why our committee recommended, as it did in its 2007 report *Children: The Silenced Citizens*, that Parliament establish an independent children's commissioner who would monitor the implementation of the UN Convention on the Rights of the Child and act as an advocate for children across Canada.

Our committee recommends that the commissioner have the capacity to receive individual complaints, to conduct public education campaigns, and to act as a liaison with various levels of government and non-governmental organizations, as well as with

the Canadian Council of Provincial Child and Youth Advocates. In addition, our committee also strongly urges that the children's commissioner has an obligation to listen to and involve children within its mandate to ensure that their voices are heard and their rights are respected.

Honourable senators, while conducting the study, our committee had the opportunity to hear from a witness who bravely shared her personal experience as a sex trade worker. Her testimony continues to echo through my mind, and I would like to share it with all honourable senators today because it provides insight into how serious this problem is. Debbie Cumby, from Ma Mawi Wi Chi Itata Centre in Winnipeg is a brave woman and loving mother. She told our committee:

I consider myself a lucky one. Many times, my life could have been taken from me, but I survived it. Lately, though, this sense of survival is not a reality for our young children and our kids out there. Too many are going missing or have been found murdered. These are our children, and it is our job to protect them and do whatever it takes to ensure their safety.

... I became pregnant with my daughter, who is now 12 years old. I just wanted a better life for her. I was terrified of her ever becoming involved in any sort of thing like that. What was a huge eye-opener was when my daughter was a year and a half and one of my regulars asked how much for her. Even though it was a horrible and negative thing, a positive came out of it because it opened my eyes more — that if I did not stop what I was doing, no matter what I did and how much I protected her, she would become involved in that lifestyle in some way.

We all want more for our children than what we had as children ourselves. I get strength from my daughter every day.

Honourable senators, I would like to repeat some Canadian statistics: Sixty-one per cent of all sexual victims are children. Eighty-six per cent of sexual assaults are perpetrated by individuals known to their victim. Every year, there are roughly 9,000 sexual assaults against children in Canada. Over 80 per cent of these child victims are girls. These statistics speak volumes. We need to protect our children. We need to give them a voice, and then we need to listen.

• (1820)

Honourable senators, I would like to move:

That the third report of the Standing Senate Committee on Human Rights, entitled *The Sexual Exploitation of Children in Canada: The Need for National Action*, tabled in the Senate on Wednesday, November 23, 2011, be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the government, with the Minister of Justice and Attorney General of Canada being identified as the minister responsible for responding to this report.

(On motion of Senator Carignan, debate adjourned.)

## THE SENATE

## MOTION TO ESTABLISH NATIONAL SUICIDE PREVENTION STRATEGY—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Dawson, seconded by the Honourable Senator Day:

That the Senate agree that suicide is more than a personal tragedy, but is also a serious public health issue and public policy priority; and, further, that the Senate urge the government to work cooperatively with the provinces, territories, representative organizations from First Nations, Inuit, and Métis people, and other stakeholders to establish and fund a National Suicide Prevention Strategy, which among other measures would promote a comprehensive and evidence-driven approach to deal with this terrible loss of life.

**Hon. Roméo Antonius Dallaire:** Honourable senators, I would like to speak on the motion presented by my colleague Senator Dawson on suicide. As a short introduction, I should like to bring the following statistics to hopefully pique your attention. The Canadian Forces lost 158 soldiers, men and women — women in combat units — in the recent campaign in Afghanistan. There are unconfirmed estimates now that, due to the injuries of that mission and of previous missions, the figure is far higher, in the order of 175 or 180, due to soldiers who have returned and committed suicide due to the psychological impact and operational stress injuries.

[*Translation*]

I will speak to the motion proposing a national suicide prevention strategy.

Honourable senators, today, I would like to talk about the issue of suicide in relation to the motion introduced by Senator Dawson. As he has said, suicide is not only a personal tragedy but also a serious public health issue that the government must take into consideration in order to develop an effective action plan that will allow the federal government, the provinces and all relevant organizations to work together to establish a national suicide prevention strategy.

I agree with the honourable senator's solution, and I would like to address this issue by talking about how it relates to members of the Canadian Forces, veterans and those who serve overseas.

[*English*]

As part of their service, soldiers, sailors, airmen and airwomen may be exposed to traumatic situations, both in the field, abroad and at home, and in training. In our roles in the UN or NATO missions, our soldiers have faced unimaginable atrocities. These images remain vividly imprinted in their memory, even several decades later. The missions in Rwanda, Yugoslavia, Cambodia, or the latest in Afghanistan, for example, have deeply marked the soldiers who took part. Smaller participation in missions such as

in the Congo, in Sudan and in Sierra Leone, has also left traces in the minds of many. Some suffer psychological consequences of these horrors instantly, while others do not feel the effects until years later.

One of the 12 officers who were deployed with me in Rwanda 17 years ago, committed suicide three years ago, 14 years after the event. The board of inquiry confirmed that the suicide was due to the operational stress injury and, so, to the mission.

[*Translation*]

Having lived through this situation, I would like to implore you to consider my suffering, which is shared by many veterans and active members of the Canadian Forces. The events that I experienced left a lasting mark that changed my life and my family's. I lived through hell and, although the worst is now behind me, I am still suffering the consequences of my devoted service to this country.

[*English*]

Last Easter, as my granddaughter was just turning eight months, in the living room, while the family was together, she fell down and hit her head. She, of course, cried. There was no serious injury, but the whole family reacted instantaneously in coming to her comfort, except for me. The noise of her head hitting the table and her cries immediately brought back the hundreds upon hundreds of children that I saw slaughtered, abandoned and dying in the streets, in the woods, in the forests, in the mountains and in the rivers of Rwanda.

It came back, digitally clear and in slow motion, and it lasted for minutes, making it nearly impossible to pick up or even console my grandchild. It has required a continuum of care and medication to be able to now appreciate her a little more.

[*Translation*]

My case is far from unique. The number of veterans and active members suffering from injury, operational post traumatic stress such as depression, stress and other anxiety disorders tripled between 2002 and 2007. This infernal spiral of psychological suffering can drive people to the same point I got to, in other words to attempted suicide and in far too many cases, to suicide.

I would not wish the hell of living with this pain and distress on anyone.

[*English*]

The most recent statistics on military and veteran suicide were released this year, in a study by Statistics Canada entitled *Canadian Forces Cancer and Mortality Study: Causes of Death*. This study examined the causes of death of Canadian Forces regular force members who had joined and served between 1971 and 2006. It was found that 696 male veterans and 29 female veterans had committed suicide. Additionally, in the same period 201 male and 37 female members had committed suicide while still in service. These are confirmed, documented suicides followed by boards of inquiry to confirm them. There are many more injurie

and poisonings, among other causes of death, that cannot be verified as self-inflicted death. These numbers are far too high and yet to be defined.

What also concerns me, honourable senators, is that these numbers only go up to 2006. We do not know the military and veteran suicide rates from 2007 to today. What we do know, however, is that the operational tempo increased significantly, in this most recent time period, with the theatre of operations in Afghanistan. When the Canadian Forces was fighting that combat mission, it was also on humanitarian missions in Haiti, Sierra Leone, Darfur and the Congo, on security operations at the Vancouver Olympic Winter Games and conducting regular operations, including search and rescue in defence of Canadian sovereignty.

• (1830)

This heavy demand on our relatively small military comes with an invisible cost paid by some of our forces through mental health.

Let us note, honourable senators, that the Canadian Forces began their mission in Kandahar in 2006 and that the most combat-related deaths, injuries and heaviest fighting have occurred since then. However, since we do not have official military and veteran suicide statistics from 2006 onward, allow me to paint you a rather disconcerting picture of the Canadian Forces mental health situation.

[Translation]

Statistics show that the number of soldiers and veterans with suicidal thoughts is twice as high as among civilians. Nonetheless, according to officials, the rate of suicide is similar among civilians and soldiers of the same age. This might be explained by the fact that soldiers are carefully selected and prepared for service. Generally, they are in better health than civilians, but they are more exposed to traumatic situations. These two factors balance out and give us similar rates for the two populations. This changes when soldiers withdraw from active service. Compared to civilians of the same age, there are 46 per cent more suicides among veterans.

What is more, since 2006, 75 per cent of the clients of the new veterans charter who get rehabilitation services and monthly financial support, have a mental injury or illness. This leaves us with serious questions about the transition services for our veterans and is a major source of concern. It suggests that the number of suicides and operational stress injuries is higher than it was before 2006 and will be for years to come.

Please note, honourable senators, that these statistics pertain to the regular forces only. There are no recent, official statistics available for the reserves, which generally have deployed up to 20 per cent of all soldiers in all missions.

Recently, we have relied heavily on our reservists in order to carry out our many, simultaneous and difficult missions. In light of the difficult transition from civilian life to deployment, which reservists sometimes have to make many times, and their

geographical distance from Canadian military bases, we estimate that suicide and mental health problems are as prevalent in this group. A deliberate effort to gather information is absolutely essential to a better assessment of the situation.

[English]

Honourable senators, because of personal contacts I have maintained within the military and veteran community, I have been able to gather supporting evidence for the difficult situation portrayed by the facts I have just shared. I am troubled to tell you that it has been a difficult year. This month in particular, four reservists who all served in Afghanistan recently committed suicide. Over the last two weeks, four other soldiers have attempted suicide. This week, two more were successful.

In 2010, the recent average suicide rate doubled. We lost 22 serving members this way. In 2011, statistics have increased significantly. This is heartbreakingly unacceptable. These are casualties of the same operations, for which we say nothing nor provide any recognition, as those who died on the battlefield.

The impact of military suicides and even suicides among military family members and close relations also needs to be considered. The absence of a serving family member, particularly a mother or a father, through death or deployment, and the possible changes in behaviour upon return can traumatize family members as well. This collateral cost of service needs to play into the development of a national suicide prevention strategy. You deploy the soldier, sailor, air person; you have also committed the family.

We are in a country with a small military in comparison with those of our allies. However, we pull our weight as part of missions led by international coalitions. Due to the limited number of Canadian Forces members, members serve in operations in overseas theatres on a regular basis. It is not unusual to find members who have completed three or four deployments to Afghanistan alone. When you count the Yugoslavian campaign and a series of other missions, we have cases of sergeants who have nine deployed missions, each of six months, plus pre-training.

We now have in the Canadian Forces members who have more combat time than the Second World War veterans in far more complex scenarios.

**The Hon. the Speaker *pro tempore*:** Honourable senators, could we have order so that we could hear Honourable Senator Dallaire, please?

**Some Hon. Senators:** Hear, hear!

**Senator Dallaire:** I will speak louder, and as my marine corps friends taught me, I will power talk.

This situation increases stress and the risk of experiencing traumatic events. Many suffer from physical and psychological wounds that can possibly lead them to suicide. The cause of injury for this population group is high.

Other government departments may be affected too, by the tempo of the whole-of-government deployments overseas that we have now introduced as policy. In particular, there are agencies like the Department of Foreign Affairs and International Trade Canada, or DFAIT, diplomats who are deploying and their staff, the RCMP, a number of municipal and provincial police. We have on average, honourable senators, over 200 police deployed at any one time around the world, as well as CIDA, whose development staff are now deployed out of the wire and in the field to be able to implement their tasks in the missions given. These can also experience levels of stress and traumatic situations similar to those experienced by the military. It is not only the military that experience the fallout of trauma. Non-government organizations providing humanitarian aid in conflict or disaster zones may also suffer from similar conditions, as do journalists who have spent too much time in theatres of war and who then are affected; and whether they are capable of sustaining those stresses and providing the objective reports should also be considered by their agencies. They, too, are vulnerable to operational stress injuries and conditions that can lead to suicide. Operational stress injury is an injury that can be terminal.

**The Hon. the Speaker *pro tempore*:** Honourable Senator Dallaire, your 15 minutes has expired, but would you like to ask the honourable senators for an extension of five minutes?

**Senator Dallaire:** Without wanting to impose, I would, please.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted for five minutes?

**Hon. Senators:** Agreed.

**Senator Dallaire:** I will speak faster.

*[Translation]*

When developing a national suicide prevention strategy, we must consider the problems experienced by our veterans, current members of the Canadian Forces, and any other person with psychological injuries associated with stressful events experienced in the line of duty, as well as their families. I repeat, as well as their families.

*[English]*

The officer who committed suicide three years ago when deployed with me was found the next morning after a tiff with his wife who then went to sleep with their daughters in order to calm the family. Three years later, on the anniversary of that suicide, the now teenage girls have accused their mother of having perpetrated or advanced the suicide of their father by the fact that the stress had made her less tolerant. The impact on the families lasts longer than the one year of support of bereavement we give. They last, potentially, for a lifetime.

*[Translation]*

This different reality must be taken into consideration so that we can address their specific needs. The resources available to them must take into account what they have lived through and the psychological injuries they have. Suicide is not an individual problem; it is a societal problem because it is society that requires the dangerous services that put these individuals at risk. We must ensure that we protect individuals who are suffering from themselves and give them tools to help them find another way

to ease their suffering. They kill themselves because they are hurting. They are trying to ease their physical and psychological pain.

• (1840)

Follow-up is essential to prevent them from suffering a fatal relapse and to help them find a balance that, although precarious, can keep them alive. We must recognize that the Canadian Forces' approach to mental health has evolved since my time. The Canadian Forces and Veterans Affairs Canada acknowledge psychological wounds, such as wounds related to operational stress and post-traumatic stress. This acknowledgement can help those who are suffering get treatment. Before, these struggles were considered to be a sign of weakness. The military system adjusted in light of the many cases and adopted an approach that favours dialogue. We hope that the National Hockey League will move in the same direction.

Training is offered as part of military training before and after deployment, to explain the symptoms and present the treatments and resources available to those struggling with these types of problems.

As a result of changing attitudes, members of the Canadian Forces now receive better support from the chain of command and from their peers. Although there is still work to be done in this regard — particularly in order to help reservists who are often isolated in rural areas and do not have access to services because of their geographic distance from a military base — the process of raising awareness has been reasonably successful, and measures have been taken to address the problem.

*[English]*

Honourable senators, we know that December is a particularly difficult month for those who suffer from mental health issues. This is particularly the case for those of us in the military who have served and are now veterans. December is meant to be a joyful holiday season, but military members are often not able to be with their families. Those who are or who have served often find themselves thinking, like on Remembrance Day, about those who were never able to make it home.

This December, honourable senators, let us take a stand and show those feeling the pull of the suicidal vortex that Parliament is there for them and that we will do something to help them live a more positive life.

*[Translation]*

Honourable senators, it is important to take action now and to adopt this motion today in order to examine possible options and implement a national suicide prevention strategy. The other house has already unanimously adopted a similar motion to take concrete action to combat suicide. The characteristics of soldiers and veterans must be implicitly included in order to ensure that their particular problems are considered.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable Senator, this subject is particularly important to me. Since I have not had time to prepare my speech, I would like to take the adjournment of the debate.

(On motion of Senator Carignan, debate adjourned.)

[ Senator Dallaire ]

## ROYAL ASSENT

**The Hon. the Speaker *pro tempore*** informed the Senate that the following communication had been received:

RIDEAU HALL

December 15, 2011

Mr. Speaker,

I have the honour to inform you that the Right Honourable David Johnston, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 15th day of December, 2011, at 6:17 p.m.

Yours sincerely,

Stephen Wallace  
Secretary to the Governor General

The Honourable  
The Speaker of the House of Commons  
Ottawa

Bills assented to Thursday, December 15, 2011:

An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2012 (*Bill C-29, Chapter 23, 2011*)

An Act to implement certain provisions of the 2011 budget as updated on June 6, 2011 and other measures (*Bill C-13, Chapter 24, 2011*)

An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts (*Bill C-18, Chapter 25, 2011*)

[English]

## THE SENATE

MOTION TO URGE GOVERNMENT TO OFFICIALLY APOLOGIZE TO THE SOUTH ASIAN COMMUNITY AND TO THE INDIVIDUALS IMPACTED IN THE KOMAGATA MARU INCIDENT—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator Munson:

That the Government of Canada officially apologize in Parliament to the South Asian community and to the individuals impacted in the 1914 Komagata Maru incident.

**Hon. Mobina S. B. Jaffer:** Honourable senators, may I please respectfully ask the Honourable Senator Carignan as to when I may expect him to respond to this item on the Order Paper? I have many people in my province who are asking me what is happening with this motion.

[Translation]

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have to prepare my notes. Accordingly, my speech will certainly not be for tomorrow. I will take the floor briefly tomorrow in order to prevent this motion from being dropped from the Order Paper. Nonetheless, my speech will probably be postponed until early February.

[English]

## CLIMATE CHANGE

## INQUIRY—DEBATE ADJOURNED

**Hon. Grant Mitchell** rose pursuant to notice of October 26, 2011:

That he will call the attention of the Senate to the need for a new call to action on climate change.

He said: Honourable senators, I would like to speak to this further, but now is not the time. I am not ready. I am sure there are people here who are quite happy to hear that.

**Some Hon. Senators:** Hear, hear.

**Senator Mitchell:** At the same time, it is on Day 15, so I would like to restart it or reserve it or re-establish it and reserve my time for the future, if I could do that.

(On motion of Senator Mitchell, debate adjourned.)

• (1850)

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO DEPOSIT REPORT ON STUDY OF ACCESSIBILITY OF POST-SECONDARY EDUCATION WITH CLERK DURING ADJOURNMENT OF THE SENATE

**Hon. Kelvin Kenneth Ogilvie**, pursuant to notice of December 14, 2011, moved:

That the Standing Senate Committee on Social Affairs, Science and Technology be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate the final report relating to its study on the accessibility of post-secondary education in Canada, before December 31, 2011, if the Senate is not then sitting and that the report be deemed to have been tabled in the Senate.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

(The Senate adjourned until tomorrow at 9 a.m.)

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